Petition

81-1860

Supreme Court, U.S.
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No. 81——

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

J.P. STEVENS & CO., INC.,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD

and

AMALGAMATED CLOTHING AND TEXTILE WORKERS UNION, AFL-CIO, CLC,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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QUESTIONS PRESENTED

(1) Whether the National Labor Relations Board is empowered under § 10(c) of the National Labor Relations Act, 29 U.S.C. § 160(c), to order a respondent to pay litigation expenses to the Board and litigation expenses and organizational expenses to a charging party, despite the absence of such authority in the language or legislative history of the Act?

(2) Whether the Order of the National Labor Relations Board requiring petitioner to pay litigation expenses to the Board and litigation expenses and organizational expenses to the charging party constitutes a punitive award which is impermissible under the Act?

(3) Whether the National Labor Relations Board's award of organizational and litigation expenses based on petitioner's history before the Board, despite the concededly non-frivolous nature of petitioner's defenses, denies petitioner due process of law by imposition of a significant impediment to its access to a fair and open hearing of its defenses and subsequent review by the courts?

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OPINION BELOW

The opinion issued by the Court of Appeals is officially reported at 668 F.2d 767 (4th Cir. 1982); it is unofficially reported at 109 LRRM 2345 and is reproduced in Appendix A (A1) of this petition. The Decision and Order of the National Labor Relations Board was issued on August 20, 1979, is officially reported at 244 NLRB 407, is unofficially reported at 102 LRRM 1039 and at 1979-80 C.C.H. NLRB Dec. ¶ 16,143, and is reproduced in Appendix B (A22) of this petition.

JURISDICTION

The Court of Appeals issued its opinion enforcing the order of the National Labor Relations Board on January 8, 1982. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Constitutional provision involved is Amendment V which reads in pertinent part:

> no person shall be . . . deprived of life, liberty or property, without due process of law.

The statute involved is the National Labor Relations Act, as amended, 61 Stat. 136, 713 Stat. 519, 29 U.S.C. § 151 et seq. The relevant section is 10(c), 29 U.S.C. 160(c). The pertinent text is as follows:

> (c) . . . If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back-pay, as will effectuate the policies of this subchapter . . . .

STATEMENT OF THE CASE

The petitioner, J.P. Stevens & Co., Inc. ("Stevens"), is a Delaware corporation with its principal office in New York, New York, and is engaged in the manufacture of textile and textile related products throughout the Southeastern United States. Stevens has for a number of years been the subject of organizing campaigns by the respondent, Amalgamated Clothing and Textile

Workers Union, AFL-CIO, CLC ("Union").[1] In September 1974, the Union launched an organizing campaign at Stevens' Wallace, North Carolina plants and warehouses. On December 16, 1974, the Union demanded that Stevens bargain with it as the representative of Stevens' employees. The following day the Union petitioned for an election with the National Labor Relations Board ("Board"). On January 20, 1975, the Board scheduled an election to be conducted on February 19, 1975. The election was conducted on that date and the Union was defeated by a substantial margin.

Several months later the Union filed charges with the Board asserting that Stevens had committed unfair labor practices during the campaign which invalidated the election results, and that Stevens had violated Sections 8(a)(1) and 8(a)(5) of the National Labor Relations Act (the "Act"), 29 U.S.C. §§ 158(a)(1) and (5), by refusing to recognize and bargain with the Union. The Union alleged that the unfair labor practices had dissipated its majority status and created an atmosphere in which a free and fair election could not be conducted, thus warranting a bargaining order as prescribed by *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969). The Board issued a formal complaint and hearings before an administrative law judge were conducted. The administrative law judge found that the Union had achieved majority status on December 16, 1974, and concluded that Stevens had violated §§ 8(a)(1) and 8(a)(5) of the National Labor Relations Act. None of the unfair labor practices with which Stevens was charged were found to have occurred before January 20, 1975, the day the Board issued its order scheduling the election.

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[1] The original charging party before the National Labor Relations Board was the Textile Workers Union of America, which merged with the Amalgamated Clothing Workers of America on June 2, 1976. For simplicity's sake, this labor organization will be referred to as the "Union."

The administrative law judge recommended a cease and desist order together with various affirmative remedies, including a bargaining order. He also recommended that Stevens be required to pay to the Union organizational costs and expenses sustained by the Union during its campaign at Wallace, North Carolina, between September 1974 and February 1975, and further recommended that Stevens be required to pay the Union's litigation expenses. Although Stevens' defenses to the charges were not frivolous, a point conceded by the Board before the Court of Appeals (A233),[2] the administrative law judge based his recommendation upon Stevens' past history of opposition to unionization and litigation before the Board. The judge also awarded litigation expenses to the Board, even though they were not requested by the Board's General Counsel.

The Board in its Decision and Order adopted these last recommendations of the administrative law judge without comment. 244 N.L.R.B. 407 (1979). The Board ordered Stevens to pay to the union all reasonable and necessary organizational costs and expenses sustained during the campaign at Wallace, North Carolina, between September 1974 and February 1975, including, but not limited to salaries, travel expenses, subsistence, materials, rents, costs of printing, and postage fees. The Board further ordered Stevens to pay the National Labor Relations Board and the Union for the reasonable costs and expenses incurred by them in the investigation, preparation, presentation, and conduct of the proceeding. (A29). The Board also adopted most of the administrative law judge's other recommendations, but found that the Union had not achieved majority status until February 19, 1975.

Both Stevens and the Union petitioned the Court of Appeals for a review of the Board's Order pursuant to

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[2] Despite this concession, the Court of Appeals found that one of Stevens' defenses was frivolous. (A14).

Section 10(f) of the Act, 29 U.S.C. § 160(f). Stevens sought to set aside the Order in its entirety and the Union requested expansion of the remedy. The Board filed a cross-application for enforcement pursuant to Section 10(e) of the Act, 29 U.S.C. § 160(e). The Court of Appeals declined to expand the remedy as requested by the Union and enforced the provisions of the Order. While the Court was unanimous in enforcing most of the Board's Order, it was divided on the issue of organizational and litigation expenses. Judge Field dissented from that part of the decision. Stevens now seeks review of only this portion of the judgment enforcing the Board's Order requiring payment of organizational costs and litigation expenses.[3]

REASONS FOR GRANTING THE WRIT

The case presents an issue of whether, absent express statutory authority, the National Labor Relations Board is empowered to award itself litigation expenses and to award a charging party to Board proceedings litigation expenses and organizational costs. This constitutes an important question of federal law which has not been, but should be, settled by this Court. The decision below is also in apparent conflict with a decision of this Court which holds that the National Labor Relations Board has no authority to issue punitive orders. *Republic Steel Corp. v. NLRB*, 311 U.S. 7 (1940). Additionally, the Order of the Board, enforced by the Court of Appeals, denies Stevens due process of law by requiring Stevens to litigate cases before the Board at the risk of having to pay the expenses of the Board and the charging party to the proceeding regardless of the *bona fides* of its defenses. The Order of the Board constitutes a major change in the Board's standard for the assessment of

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[3] By agreement between Stevens and the Union dated October 19, 1980, Stevens promised to execute in an already existing form a collective bargaining contract if the Board's Order was enforced.

such expenses and exceeds the limits of the authority granted it by Congress. A decision by this Court is necessary to define those limits.

This Court has recognized that significant questions concerning attorney fees awards under the Act are ripe for resolution. A petition for a writ of certiorari has been granted on the question of whether attorney fees and related expenses incurred in an unfair labor practice proceeding before the Board can be recovered as compensatory damages under Section 303 of the Act, 29 U.S.C. § 187. *Summit Valley Industries, Inc. v. Local 122, Carpenters and Joiners of America, cert. granted,* —— U.S. —— (1981) (No. 497). Both *Summit Valley* and the instant case contain common issues. A decision in one would affect, but not necessarily resolve, the precise question raised in the other case. Resolution of the question presented in *Summit Valley* requires a determination of the underlying question of whether there exists any authority in the Act for the award of attorney fees. This is precisely the issue presented in this petition.

I. THE NATIONAL LABOR RELATIONS BOARD HAS NO AUTHORITY TO AWARD ITSELF LITIGATION EXPENSES OR TO AWARD LITIGATION AND ORGANIZATIONAL EXPENSES TO A CHARGING PARTY.

The Board has ordered Stevens to pay litigation expenses to the Board and litigation expenses and organizational expenses to the Union. The Board predicated its award upon Stevens' past history before the Board.

The Board's Order is contrary to the American rule that, absent statutory authority, parties to legal proceedings bear their own expenses of litigation. The Board has previously awarded litigation and organizational expenses only in cases where a respondent's defenses were found to be frivolous and not debatable. *Tiidee Products, Inc.*, 194 N.L.R.B. 1234 (1972) (Supp. Decision); *Heck's,*

Inc., 215 N.L.R.B. 765 (1974). While, as will be demonstrated below, the Board is without authority to award litigation and organizational expenses even in those circumstances, the Board in the instant case has carried its policy one step further by premising the award of such expenses on Stevens' opposition to unionization and its history of litigation before the Board and the courts.

The Board claims authority to issue such an award from § 10(c) of the Act, 29 U.S.C. § 160(c), which grants the Board authority to adjudicate disputes and issue remedial orders. Section 10(c) provides in pertinent part that upon a finding that an unfair labor practice has been committed, the Board may, among other things, "take such affirmative action including reinstatement of employees with or without back-pay, as will effectuate the policies of this subchapter."

The question of whether the Board has any authority to award litigation expenses has been before this Court on one previous occasion. *NLRB v. Food Store Employees*, 417 U.S. 1 (1974). This Court found it unnecessary to address the question in that case, and expressly declined to do so:

> We thus have no occasion at this time to address the question whether the Board's broad powers under § 10(c), 29 U.S.C. § 160(c), to fashion remedies include power to order reimbursement of litigation expenses and excess organizational costs.

Id. at 8, n.9.

Despite this Court's refusal to rule on the Board's power to order payment of litigation expenses, the Court of Appeals in the instant case cited *Foodstore* for the proposition that:

> [t]he Supreme Court has expressly approved the Board's 'debatable-frivolous' standard.

[A13]. Thus, the Court of Appeals apparently, and erroneously, believed that the power of the Board to order litiga-

tion expenses had already been decided and the only issue that was necessarily before it was whether the Board properly expanded upon its "debatable-frivolous" standard. The Fifth Circuit has also apparently misinterpreted *Food Store. Winn-Dixie Stores v. NLRB*, 567 F.2d 1343, 1353 (5th Cir. 1978). Now is the time for this Court to correct this misapprehension and decide the question reserved in *Food Store.*

A prevailing litigant in the United States is ordinarily not entitled to collect attorney fees from the loser. This is "the American rule". *Alyeska Pipeline Service Co. v. Wilderness Society*, 421 U.S. 240, 247 (1975). Congress has never repudiated the American rule. What it has done, however, while fully recognizing and accepting the general rule, is to make specific and explicit provisions for the allowance of attorney fees under selected statutes granting or protecting various federal rights. *Alyeska Pipeline Service Co. v. Wilderness Society*, 421 U.S. at 259.

The National Labor Relations Act contains no such specific and explicit provision for the allowance of attorney fees. It is thus in marked contrast to the numerous statutes enacted by Congress both before and after the National Labor Relations Act, which were cited by this court in *Alyeska.* 421 U.S. at 259 n.33. While it has been held that courts may in the exercise of their inherent equitable powers award attorney fees absent express statutory authority in certain carefully circumscribed situations where "overriding considerations indicate the need for such a recovery," *Hall v. Cole*, 412 U.S. 1, 4-5 (1973), an administrative agency possesses no such inherent equitable powers. It is a creature of the statute which brought it into existence and has no powers except those conferred upon it by statute. *International Union of Electrical, R. & M. Workers v. NLRB*, 502 F.2d 349, 353 note * (individual comment by Judge MacKinnon) (D.C. Cir. 1974), *cert. denied*, 417 U.S.

921 (1974). It is well established that only Congress, and not administrative agencies, can grant exceptions to the "American rule". *Turner v. F.C.C.*, 514 F.2d 1354 (D.C. Cir. 1975). Broad grants of authority to administrative agencies have repeatedly been held to be insufficient to support awards of attorney fees by those agencies. *Greene County Planning Board v. Federal Power Commission*, 559 F.2d 1227 (2d Cir. 1976) (en banc), *cert. denied*, 434 U.S. 986 (1978); *Pacific Legal Foundation v. Goyan*, —— F.2d ——, 50 U.S.L.W. 2329 (4th Cir. 1981). Although powers granted to the Board under § 10(c) are concededly broad, it has no authority to award itself litigation expenses unless Congress has given it such authority, and this Congress has not done.

Neither the legislative history of the Act nor the language of § 10(c) provide support for the Board's position. There is nothing in the legislative history which indicates that Congress intended the Board to possess the power to award litigation expenses. Further, the Board's interpretation runs counter to the express language of § 10(c). The Board has focused on its authority to "take such affirmative action including reinstatement of employees with or without back-pay, as will effectuate the policies of" the Act. But this language must be construed in harmony with the spirit and remedial purposes of the Act. *Republic Steel Corp. v. NLRB*, 311 U.S. at 11. The words "affirmative action" are calculated more to connote that type of action ordinarily ordered by the Board in unfair labor practice cases, such as ordering the parties to engage in collective bargaining, to cease and desist from unfair labor practices, and so forth. This Court has indicated the types of affirmative action which it believes were contemplated by the Act:

> [T]he employer may be required not only to end his unfair labor practices; he may also be directed affirmatively to recognize an organization which is found to be the duly chosen bargaining-representative of his employees; he may be ordered to cease particular

> methods of interference, intimidation or coercion, to stop recognizing and to disestablish a particular labor organization which he dominates or supports, to restore and make whole employees who have been discharged in violation of the Act, to give appropriate notice of his compliance with the Board's order, and otherwise to take such action as will assure to his employees the rights of which the statute undertakes to safeguard. These are all remedial measures . . . .

Republic Steel Corp. v. NLRB, 311 U.S. at 12.

That Congress did not intend to provide the Board the power to award litigation expenses is apparent. In its only reference to monetary compensation in § 10(c), Congress thought it necessary to state explicitly that employees could be "reinstated with or without back-pay." This language did not appear in the first bill introduced in the Senate in 1934, S. 2926 (73d Cong.). That bill would have authorized the Board "to take such affirmative action or to perform any other acts that will achieve substantial justice under the circumstances." A new bill, S. 1958 (74th Cong.), was introduced the following year. This bill changed the pertinent language to read: "and to take such affirmative action, including restitution, as will effectuate the policies of this act." The legislative history on this point is instructive:

> The broad term "restitution" is used in S. 1958 to take in the host of varied forms of reparation which the National Labor Relations Board has been making in its present decisions, to suit the needs of every individual case. An effort to substitute express language such as reinstatement, back pay, etc., necessarily results in narrowing the definition of restitution, which may include many other forms of action.

Comparison of S. 2926 and S. 1958: Memorandum of March 11, 1935, prepared for Senate Committee on Education and Labor comparing S. 1958 (74th Cong., 1st sess.), with S. 2926 (73d Cong., 2d sess.), as reported with amendments, *Legislative History of the National Labor Relations Act, 1935*, p. 1360 (1949).

The word "restitution" was subsequently struck and replaced with the language which was finally enacted. It is clear, therefore, that by its use of the term "back-pay," Congress limited the Board's authority in making monetary awards. If the Board is of the opinion that the authority granted it by Congress is not broad enough to accomplish the ends which the Board perceives are necessary, then the Board should request Congress to amend the Act rather than attempt to do so by administrative fiat.

Another significant weakness in the Board's position is that such an award seriously undermines the intent of the Act to carefully adjust and balance the rights and interests of labor, management, and government and to provide fair and evenhanded treatment. *International Union of Electrical, R. & M. Workers v. NLRB*, 502 F.2d at 353 note* (individual comment by Judge MacKinnon). The award of attorney fees disturbs this delicate balance since no comparable remedy is available against a charging party, even though that party may be motivated by a pattern of illegal resistance to unionization or has filed frivolous or vexatious charges. The "affirmative action" clause in § 10(c) applies only to the charged party. The charging party, who is a party of right (29 C.F.R. § 102.8), may thus file frivolous charges with impunity.[4] And, of course, there is nothing in the Act which provides for attorney fees against the Board itself.[5]

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[4] Indeed, the Board has held that it is an unfair labor practice for an employer to sue an employee in a civil action to recover expenses incurred defending repeated frivolous charges before the Board. *Power Systems, Inc.*, 239 N.L.R.B. 445 (1978), *enf. denied sub nom. Power Systems, Inc. v. NLRB*, 601 F.2d 936 (7th Cir. 1979).

[5] Under the recently enacted Equal Access To Justice Act, the Board may be required to pay attorney fees to small employers where the Board's position in a proceeding is not substantially justified. 94 Stat. 2325, 5 U.S.C. § 504. Stevens does not come

It should be noted that from the date of the enactment of the statute in 1935, until 1972, when *Tiidee Products, Inc.*, was decided, the Board never once awarded litigation expenses to itself or to a union. A review of the history of the Board's supposed authority to award such expenses reveals that *Tiidee* and *Heck's* were ill-conceived and founded upon the flimsiest of grounds. In neither case was the respective respondent eventually required to pay litigation expenses to the Board. Indeed, the circular approach by which the Board's current policy was established has been labeled "disturbing". *International Union of Electrical, R. & M. Workers v. NLRB (Tiidee III)*, 502 F.2d at 354 n. 16.[6] The Board in *Tiidee* had initially concluded that it was without authority to grant compensatory monetary damages in refusal to bargain cases. *Tiidee Products, Inc.*, 174 N.L.R.B. 705 (1969). In apparent response to the Court of Appeals for the District of Columbia's remand on this issue, *International Union of Electrical, R. & M. Workers v. NLRB (Tiidee I)*, 426 F.2d 1243 (D.C. Cir. 1970), *cert. denied*, 400 U.S. 950 (1970), the Board ruled in a Supplemental Decision that litigation expenses could be awarded in cases where a respondent's defenses were "frivolous" as opposed to "debatable". Subsequent review of the award of litigation expenses was found by the *Tiidee III* court to have

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within the financial limitations of that Act and thus could not recover against the Board. The Equal Access To Justice Act does not provide for awards against charging parties.

[6] The complicated history of the *Tiidee* litigation is as follows: *Tiidee Products, Inc.*, 174 N.L.R.B. 705 (1969), *enf'd and remanded sub nom. International Union of Electrical R. & M. Workers v. NLRB (Tiidee I)*, 426 F.2d 1243 (D.C. Cir. 1970), *cert. denied*, 400 U.S. 950 (1970), *on remand*, 194 N.L.R.B. 1234 (1972), *enf'd as modified sub nom. I.U.E. v. NLRB (Tiidee III)*, 502 F.2d 349 (D.C. Cir. 1974); *Tiidee Products, Inc.*, 176 NLRB 979 (1969), *enf'd* and *remanded sub nom. I.U.E. v. NLRB (Tiidee II)*, 440 F.2d 298 (D.C. Cir. 1970), *on remand*, 196 N.L.R.B. 158 (1972), *enf'd as modified sub nom. I.U.E. v. NLRB (Tiidee III)*, 502 F.2d 349 (D.C. Cir. 1974).

been circumscribed in that circuit by the intervening decision of another panel in the *Heck's, Inc.* case. *Food Store Employees Union, Local 347 Amalgamated Meat Cutters v. NLRB (Heck's, Inc.)*, 476 F.2d 546 (D.C. Cir. (1973).[7] That panel expanded on the *Tiidee I* rationale as enunciated by the Board in its Supplemental Decision and provided for such awards not only in instances where a respondent's defenses were "frivolous", but where a respondent was found to have engaged in "flagrant repetition of conduct previously held unlawful." *Id.* at 551. The Court of Appeals in *Tiidee III* did not, however, enforce the Board's Supplemental Order of attorney fees to itself. The *Heck's* case was subsequently reversed and remanded by this Court, which found that the Court of Appeals improperly exercised its authority under § 10(e) and (f) of the Act to modify Board orders. *NLRB v. Food Store Employees*, 417 U.S. at 8-9. On remand, the Board refused to order payment of litigation expenses. 215 N.L.R.B. at 768. Both of these cases were decided before *Aleyska* and thus its impact was not assessed by either the Court of Appeals or the Board.

Finally, by awarding itself litigation expenses the Board took on a direct financial interest in the outcome of its decision. By doing so, the Board in the instant case has cast a pall over the fundamental fairness of the entire proceeding. It is axiomatic that a fair trial and a fair tribunal is a basic requirement of due process. *In re Murchison*, 349 U.S. 133 (1955). This is as true in proceedings before an administrative agency as it is before a court. Indeed, if there is any difference, the

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[7] The history of the *Heck's* litigation is equally complicated: *Heck's Inc. (Heck's I)*, 172 N.L.R.B. 2231 (1968), *remanded sub nom. Food Store Employees Union, Local 347 v. NLRB*, 433 F.2d 541 (D.C. Cir. 1970); *Heck's, Inc. (Heck's II)*, 191 N.L.R.B. 886 (1971), *modified sub nom. Food Store Employees Union, Local 347 v. NLRB*, 476 F.2d 546 (D.C. Cir. 1973), *remanded*, 417 U.S. 1 (1974), *on remand, Heck's, Inc. (Heck's III)*, 215 N.L.R.B. 765 (1974).

requirement that the trier of fact be impartial and unconcerned in the result applies more strictly to an administrative adjudication where many of the safeguards found in court proceedings have been relaxed in the interest of expedition and administrative efficiency. *NLRB v. Phelps*, 136 F.2d 562, 563 (5th Cir. 1943). No matter what the evidence may be against an individual, he has the right to an impartial judge. *Tumey v. State of Ohio*, 273 U.S. 510, 535 (1927). Fairness not only requires the absence of actual bias, but our system of law has always endeavored to prevent even the appearance of unfairness. This Court has said on more than one occasion that "justice must satisfy the appearance of justice." *In re Murchison*, 349 U.S. at 136; *Offutt v. United States*, 348 U.S. 11, 14 (1954).

By granting itself a financial stake in the outcome of its decision, the Board seriously undermines the appearance of fairness in its actions. The award in question is not required to be paid into the general treasury, but directly to the Board. The potential for abuse in allowing an agency to, in effect, create its own funding is patent. This raises such an obvious conflict of interest question that, even if the practice were not violative of due process,[8] Congress cannot be presumed to have intended that the Board be invested with such powers without evidence of Congress' careful consideration of the issue and its express statement of such an intent. The legislative history of the National Labor Relations Act is totally devoid of any evidence that Congress had such an intent.

II. THE AWARD OF LITIGATION AND ORGANIZATIONAL EXPENSES IS IMPERMISSIBLY PUNITIVE.

Even if it is assumed that the Board might be empowered to award litigation and organizational expenses in some narrow circumstances, § 10(c) of the Act does not support the Board's decision since the award in this

[8] *Cf., Marshall v. Jerrico, Inc.*, 446 U.S. 238 (1980).

case is not remedial. The Board is precluded from the use of a purely punitive rationale as a basis for upholding an award under § 10(c). The power to command affirmative action under § 10(c) is remedial and not punitive. *Republic Steel Corp. v. NLRB*, 311 U.S. at 12. The National Labor Relations Act relates to the protection of employees and the redress of their grievances, not the redress of any supposed public injury after the employees have been made secure in their right of collective bargaining and have been made whole. *Id.* at 11. The only justification advanced by the Board of litigation expenses to itself is that the Board found it "only reasonable that the general tax paying community be relieved from shouldering the expenses entailed in protracted litigation at the hand of Steven's lawlessness." (A203-204). This in no way secures the employees' right of collective bargaining, nor does it make them whole. These ends were accomplished by the other extensive relief ordered by the Board. The Act does not provide indemnity against community losses as distinguished from the protection and compensation of employees. *Id.* at 10.

The National Labor Relations Board was created and exists for the purposes of determining unfair labor practices and otherwise discharging its duties under the Act. The only rationale that can be advanced by the Board for ordering the reimbursement of the Board's litigation expenses is that such an order will act as a deterrent. However, deterrence standing alone is insufficient to justify the Board's Order; otherwise the Board would be free to set up any system of penalties it saw fit. *Id* at 12. While the Board has sought to sidestep the prohibitions of *Republic Steel* by labeling its award of litigation expenses to the Union as "remedial" rather than "punitive", it did not even attempt to so label its award of litigation expenses to itself. Indeed, it could not do so since the Board is not an intended beneficiary of the Act and thus such an award to the Board in no way restores the *status quo ante*. Since the award is not remedial, it

can only be viewed as punitive and as intended to deter Stevens from defending future charges brought against it.

The award of organizational and litigation expenses to the Union is also punitive. The charging party in an unfair labor practice proceeding litigates to protect its own private interests. *Heck's, Inc.*, 191 N.L.R.B. 886 (1971). It is manifest that the Union is not an employee within the meaning of the Act nor was it the representative of the Wallace employees at the time the unfair labor practices were committed. The Union did not achieve majority status until February 19, 1975, the day the election was held and the campaign came to an end. Yet the Board has ordered reimbursement of organizing expenses for the entire period of the campaign, a period during which, by the Board's own findings, the Union did not enjoy a majority status among the employees and was thus not their representative. Indeed, for the greater part of the period, from September 1974 to December 16, 1974, the Union did not even purport to have majority status. Since the unfair labor practices in question were not committed until after January 20, 1975, and the Union, although it lost the election, ultimately achieved through the Board's Order the certification which was the object of this campaign, the award for the expenses of the campaign can hardly be viewed as remedial. That the award is punitive in nature is evidenced by the administrative law judge's statements that the award is justified in view of Stevens' record of opposition to unionization of its employees. (A201). Such a rationale is impermissible. The proper role of the Board is akin to that of an impartial and neutral referee and it is fundamental that the Board has no authority to punish the company because it is against a union.

An employer has a legal right to oppose a Union and such opposition is not an unfair labor practice. *Florida Steel Corp. v NLRB*, 587 F.2d 735, 753 (5th Cir. 1979). The Board has attempted to avoid the prohibition of *Republic Steel* by labelling the award as remedial, rather

than punitive. The mere labelling of such an award as remedial does not change its substantive nature. The Union would have expended the same amount of money on the campaign even if the unfair labor practices had not occurred immediately before the election in February 1975. It is clear, therefore, that the Union's expenditures bear no reasonable relation to the commission of the unfair labor practices which are the subject of this case. Thus, the award of these expenditures is not remedial. Therefore, only two reasons for their payment can be advanced. One is to punish Stevens for commission of the unfair labor practices. This is impermissible under *Republic Steel*. The second is to punish Stevens for the commission of unfair labor practices which were not the subject of this proceeding. This is equally impermissible. *Florida Steel Corp v. NLRB*, 587 F.2d at 753.

Both of the foregoing considerations were the foundation of the Board's Order, the latter particularly so. The Board stated that its reason for awarding organizational expenses was its finding that the Union had renewed its campaign in 1974 after unfair labor practices committed by Stevens had, in the Board's view, caused the Union to abandon campaigns in 1969 and 1973. Such reasoning demonstrates a clear intent to punish Stevens for unfair labor practices which were not the subject of the charges before the Board and not properly before the Board for its consideration.

III. THE AWARD OF ORGANIZATIONAL COSTS AND LITIGATION EXPENSES BECAUSE OF STEVENS' PAST HISTORY VIOLATES DUE PROCESS.

The Board in this case has imposed litigation expenses and organizational costs against Stevens by applying a standard which has never been used in the nearly half century which has elapsed since the Act became law. It has done so by the expedient of merely affirming without com-

ment the administrative law judge's recommendations. The Board's new standard for awarding litigation expenses and organizational expenses based on Stevens' previous history before the Board casts serious doubt upon the fundamental fairness of the proceeding before the Board and raises the alarming question of whether Stevens will not be unduly prejudiced in future proceedings. The unfair labor practices found to have occurred in this case are not unlike dozens, or even hundreds, of unfair labor practices which have been found by the Board to have been committed by employers in other cases. Yet Stevens, only because of its history, has been singled out by the Board for punishment never before imposed. Stevens may no longer defend a case before the Board solely on the relative merits of the facts present in that case. Stevens must now bear an additional burden which no other employer must bear in proceedings before the Board.

This new policy, if allowed to stand, will enable the Board to single out other employers, and by threats of imposing such expenses based on the Board's own nebulous standard, coerce them into settling cases to which they have meritorious defenses.

In his dissenting opinion in the decision below, Judge Field stated that the Board's action constituted an "attainder" against Stevens (A20). Judge Field pointed out that since every issue raised by Stevens in its defenses had substantial merit, Stevens was entitled to have those issues heard by a reasonably fair tribunal despite its history of litigation before the Board and its resolute resistance to unionization. Since the Board's new policy requires Stevens to risk an additional heavy financial burden even in cases where its defenses are substantial, Judge Field was of the opinion that the Board's action overstepped the constitutional limits of due process and, in effect, denied Stevens access to the courts. (A21).

Stevens is entitled to a fair tribunal. *In re Murchison, supra.* Again, the proper role of the Board is akin to that of an impartial and neutral referee. *Florida Steel Corp. v. NLRB*, 587 F.2d at 753. The Board's decision in this case imposes a serious burden upon Stevens' right to defend itself against charges which may arise in future proceedings since there exists the very real possibility that under the Board's new policy Stevens can be held liable for organizational costs and litigation expenses in virtually every case which may come before the Board. *See, e.g., J.P. Stevens & Company*, 247 N.L.R.B. No. 44 (1980), where the Board ordered award of litigation expenses to itself and to the union despite an administrative law judge's refusal to so recommend because Stevens' defenses were not frivolous. Stevens is now apparently required to pay litigation expenses even in cases where it prevails on some defenses, but where other non-frivolous defenses are ultimately not accepted by the Board.

It is well recognized that anti-union bias, strong convictions against unions, or even opposition to the underlying philosophy of the Labor Management Relations Act are not in themselves unfair labor practices. "In a free democracy, it is the citizen, not the Government, who fixes his own beliefs." *Florida Steel Corp. v. NLRB*, 587 F.2d at 753; *NLRB v. McGahey*, 233 F.2d 406, 409 (5th Cir. 1956). To penalize a respondent for his failure to prevail on a substantial defense has a natural affect of discouraging that individual from litigating charges to which he has a defense.

CONCLUSION

For the foregoing reasons a writ of certiorari should issue to review the judgment of the Court of Appeals and its judgment should be reversed insofar as it enforces the Board's order awarding litigation and organizing expenses to the union and litigation expenses to the Board.

Respectfully submitted,

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Dated: April 6, 1982

Appendix

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No. 81-1860

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

J. P. STEVENS & CO., INC.,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD and
AMALGAMATED CLOTHING AND TEXTILE WORKERS UNION,
AFL-CIO,
Respondents.

APPENDIX TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 79-1502

J. P. STEVENS & CO., INC.,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

AMALGAMATED CLOTHING & TEXTILE WORKERS UNION,
AFL-CIO, CLC,
Intervenor.

No. 80-1126

AMALGAMATED CLOTHING & TEXTILE WORKERS UNION,
AFL-CIO, CLC,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

On Application for Enforcement of an Order
of the National Labor Relations Board

Argued: November 11, 1980 Decided: January 8, 1982

Before FIELD, Senior Circuit Judge, SPROUSE and ERVIN, Circuit Judges.

L. Gray Geddie, Jr. (Homer L. Deakins, Jr., Martha C. Perrin, Ogletree, Deakins, Smoak, Stewart and Edwards on brief) for Petitioner; Robert Tim Brown, Assistant

General Counsel (Arthur M. Goldberg, General Counsel, Joel Ronald Ax, Deputy General Counsel on brief) for Intervenor; W. Christian Schumann, National Labor Relations Board (William A. Lubbers, General Counsel, John E. Higgins, Jr., Deputy General Counsel, Robert E. Allen, Acting Associate General Counsel, Elliott Moore, Deputy Associate General Counsel, Kenneth B. Hipp, Deputy Assistant General Counsel on brief) for Respondent.

SPROUSE, Circuit Judge:

J. P. Stevens & Company (Stevens or the Company) and the Amalgamated Clothing and Textile Workers Union, AFL-CIO, (the Union) petition for review of an order holding that the Company violated sections 8(a)(1) and 8(a)(5) of the National Labor Relations Act [29 U.S.C. §§ 158(a)(1), (a)(5)]. Stevens seeks to set aside the order and the Union requests expansion of the remedy. The Board has filed a cross-application for enforcement. We decline to expand the remedy as requested by the Union and enforce all the provisions of the order.

The Union[1] began an organization campaign at the Company's Wallace, North Carolina plants and warehouses in September 1974.[2] Although the Union had accumulated

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[1] The original charging party was the Textile Workers Union of America, which merged with the Amalgamated Clothing Workers of America on June 2, 1976. This opinion will refer to that entity, regardless of its formal designation at the time of events being discussed, as "the Union."

[2] Two prior unsuccessful campaigns, in 1969-70 and 1973, were later found to involve company unfair labor practices. *NLRB v. J. P. Stevens & Co.*, 464 F.2d 1326 (2d Cir. 1972), *cert. denied*, 410 U.S. 926 (1973) (discharging union sympathizers, etc., during the 1967 campaign); *NLRB v. J. P. Stevens & Co.*, 563 F.2d 8 (2d Cir. 1977), *cert. denied*, 434 U.S. 1064 (1978) (electronic surveillance of employees, selective enforcement of unpublished rules, etc., in 1973); *J. P. Stevens & Co.*, 220 N.L.R.B. 270 (1975) (interrogation, soliciting for surveillance, etc.)

561 signature cards from the facilities' 1000 employees by February 19, 1975, the Company easily won a representation election held on that date with 540 votes compared to 404 votes for the Union.

The Union subsequently filed charges that the Company had committed unfair labor practices during the organization campaign which invalidated the election results. The Board issued a formal complaint in January 1977. After extensive hearings on the issues, the Board's Administrative Law Judge (ALJ) concluded that the Company had violated sections 8(a)(1) and 8(1)(5) of the National Labor Relations Act, 29 U.S.C. §§ 158(a)(1), (a)(5), by discouraging union organization and by refusing to bargain with the Union. The Board affirmed the ALJ's ruling that sections 8(a)(1) and 8(a)(5) were violated and ordered the results of the February 19 election set aside. The Board's order contained notice and access provisions and required the Company to cease and desist from various specific unfair labor practices, including impeding employee distribution of union literature in nonworking areas at nonworking times, engaging in employee surveillance, threatening employees with discharge because of union activity and failing to bargain in good faith. Also, the Company was ordered to bargain with the union upon request and to pay both the Union's organizational expenses and the litigation costs of the Union and the Board. *J. P. Stevens & Co.*, 244 N.L.R.B. No. 82 (1979).

I.

The Board found that the Company had violated section 8(a)(1) on a number of occasions.

a.

In April 1974, when all Stevens employees received the annual statement of individual accumulated equity in the companywide profit-sharing plan, they learned of a substantial decrease in the value of their shares because of the

nation's economic recession in 1973-74. That development did not pass unnoticed. Four months after the equity statements were released, the Union won a collective bargaining election at Stevens' Roanoke Rapids plant; the recent drop in employees' profit-sharing equity apparently was a major issue in that election. On January 21, 1975, only four weeks before the representation election at the Wallace plants, Stevens announced to all its 38,000 hourly employees the institution of a companywide guaranteed "floor" for each employee's equity in the profit-sharing plan, insulating the value of the shares from losses due to stock market changes.

The Board found that announcement of profit-sharing changes one month prior to the Wallace election was a section 8(a)(1) violation. The ALJ had concluded that the responsible Stevens' officer's testimony that the benefits were a reasonable Company attempt to compete in the labor market and that the announcement immediately followed necessary actuarial studies was incredible. He found that "the very nature of this benefit discounted any urgency, which required announcement of the new benefit prior to the election."

We agree. It is axiomatic that an employer cannot confer economic benefits on its employees to influence their views of unionization.

> The danger inherent in well-timed increases in benefits is the suggestion of a fist inside the velvet glove. Employees are not likely to miss the inference that the source of benefits now conferred is also the source from which future benefits must flow and which may dry up if it is not obliged.

NLRB v. Exchange Parts Co., 375 U.S. 405, 409 (1964) (footnote omitted). An employer violates section 8(a)(1) by granting employee benefits, even for legitimate business reasons, if the timing of the anouncement is calculated to discourage union activity, *NLRB v. Appletree Chevrolet*,

Inc., 608 F.2d 988 (4th Cir. 1979), or to restrict the employees' freedom of choice. *J. P. Stevens & Co. v. NLRB*, 461 F.2d 490 (4th Cir. 1972). Improvements in employee benefits are presumptively improper if announced when a representation election is pending. *See Exchange Parts, supra; NLRB v. Eastern Smelting and Refining Corp.*, 598 F.2d 666 (1st Cir. 1979).

The profit-sharing benefits were declared more than a month after the election petition was filed, the day after the Board announced the date of the representation election, and after the plan had become a campaign issue at Wallace. Since the Company failed to adequately rebut the presumption of impropriety by showing that the announcement could not reasonably have been delayed until after the election, the Board's decision on this issue must be affirmed.

b.

The Board also found that Stevens violated section 8(a)(1) when it supplemented the unemployment benefits of employees who had been laid off in September, 1974. The supplemental payments were implemented after it was learned that the affected employees received $21.00 less each week because they were laid off in late September rather than after the first of October, 1974. The North Carolina unemployment compensation law had been amended to provide greater benefits after October 1, 1974.

After Stevens' officials unsuccessfully attempted to have the State Employment Security Commission equalize benefits for the laid-off employees, they decided to supplement the affected employees' benefits with company funds. Announcement of that cash bonus was made on February 11, 1975, eight days before the representation election.

The ALJ found that the Wallace plants were the focal point of employee dissatisfaction about the unequal unemployment benefits. He also found that the supplemental payments were hurriedly and prematurely announced, even

before Stevens had computed the specific amounts to be paid to individuals, to quell unrest and discourage union support. Company officials largely responsible for the cash bonus were found to be deeply involved in resisting the organization of the Wallace plants.[3] The Board concluded that the untimely announcement was another violation of section 8(a)(1). Here, again, there is substantial evidence to support the Board's decision that Stevens failed to justify its actions. *Universal Camera Corp. v. NLRB*, 340 U.S. 474 (1951).

The Company argues that our holding in *J. P. Stevens & Co. v. NLRB*, 461 F.2d 490 (4th Cir. 1972) (*Shelby*), excuses its untimely announcement of the profit-sharing and unemployment benefits. *Shelby*, however, is inapposite—there, one company action was violative and one not violative of section 8(a)(1). The "unemployment" bonus paid at Wallace in the case *sub judice* is analogous to the additional paid holiday in *Shelby*, which was held to violate section 8(a)(1). Stevens contends that it was in an impossible dilemma: either to announce the benefits at all plants except Wallace, or to announce only at Wallace, would have been an unfair labor practice. Stevens does not indicate, however, why a brief one-month postponement of *any* announcement was unfeasible or unreasonable. Likewise, there is no evidence in our case that the Wallace employees had heightened expectations concerning forthcoming benefits, as did the Shelby workers, such that withholding announcements of the profit-sharing or unemployment benefits for another month would have influenced the election. *See also NLRB v. Montgomery Ward & Co.*, 554 F.2d 996, 1000-01 (10th Cir. 1977).

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[3] The Company's concern for their employees' welfare in January 1975, as the election approached, was in marked contrast to its seemingly disinterested announcement in November 1974, one month prior to filing of the election petition, that the Company had done what it could to remedy the situation but would do no more.

c.

The Board found that Company supervisory employees wrongfully threatened an employee with discharge for Union activity, solicited employees both to testify before the Board to invalidate their signatures on the authorizations cards and to spy on fellow employees, and gave the impression of keeping the employees under surveillance. The Board also found that Wallace supervisors illegally interfered with the distribution of organizational literature on the eve and day of the representation election. Stevens concedes that those actions were wrongful and violative of section 8(a)(1).[4]

Although some of those events may well have had limited effects, others certainly had more far-reaching consequences. For example, six Stevens supervisors locked elbows at the main entrance of a Wallace plant on the day of the election, excluding employees who wished to distribute literature in nonworking areas of the factory. During the ensuing argument one supervisor threatened to call the police to remove the union sympathizers, while another later did so; the employees abandoned their attempts to enter the plant. We believe that this display of physical force and Company intransigence to unionization—at shift change, in the main plant entrance, before a group of employee spectators—was an effective reminder of Company attitudes and strength. Accounts of the event were undoubtedly rapidly disseminated throughout the plant during coffee breaks on that election day. The Board properly found those incidents to be section 8(a)(1) violations.

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[4] The Company claims that under a new literature distribution policy promulgated in January 1979, pursuant to an order of the Second Circuit, distribution which was prohibited at Wallace now would be permitted. We note that a charging party and the Board generally are entitled to relief despite apparent mootness or duplication of remedies—especially when the employer continually has eschewed voluntary relief and has evidenced unconcern for Board orders.

II.

Believing that it had obtained a card-majority of the Wallace employees, the Union demanded that the Company acknowledge it as exclusive bargaining agent on December 16, 1974. Another demand for recognition was made on January 9, 1975. Stevens persistently refused to bargain with the Union, however, and committed most of the section 8(a)(1) unfair labor practices at issue in this case after the Union's demands for recognition and prior to the representation election. Despite having obtained 561 valid authorization cards, representing a majority of the work force of 1,000, the Union suffered a heavy defeat at the polls.

The ALJ found that the Union had made effective continuing demands for recognition prior to the election and that the Company violated 8(a)(1) and (5) by refusing to recognize and bargain with the Union as prescribed by *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969). Furthermore, the ALJ found that during the organization campaign the Company engaged in a pattern of unlawful conduct designed to foment reversal of employee sentiment as expressed by the authorization cards. As a result, he held that the cards were a more reliable measure of employee choice than were the results of the February 19, 1975 election, and concluded that the unfair labor practices engaged in by the Company were sufficiently serious to warrant the imposition of a bargaining order as authorized by *Gissel, supra.*

Based on these findings, the Board ordered the Company to bargain with the Union on demand.

Issuance of a *"Gissel"* bargaining order is not confined to situations in which the employer engaged in especially egregious misconduct, but also is appropriate "in less extraordinary cases marked by less pervasive practices which nonetheless still have the tendency to undermine majority strength and impede the election process." *Gis-*

sel at 614. It is necessary however, in issuing such an order, that the Board make specific findings as to the residual effects of the employer's unfair practices, the possibility of assuring a fair rerun election and the likelihood of continuing, or recurring, employer misconduct; boilerplate language and conclusory findings will not suffice. *Appletree Chevrolet*, 608 F.2d at 997-98. Stevens complains that the ALJ did not comply with the requirement of specificity. We disagree. The ALJ's findings, which the Board affirmed, demonstrated that a bargaining order was the only method of accomplishing the wishes of a majority of Stevens employees.

The ALJ found that the implementation of the "floor" on profit-sharing and the grant of supplemental unemployment benefits alleviated employee discontent regarding major issues in the organizational campaign. Conventional Board remedies would be ineffectual in restoring the *status quo ante* with respect to these issues or in assuring that a rerun election could be held devoid of their lingering effects.

Also, Company interference with employee literature distribution on the eve and day of the election, the ALJ concluded, "reflected the Employer's disdain for clearly established statutory rights at a time proximate to the casting of the ballots."

In determining whether past unfair labor practices constitute a future threat to collective bargaining, the Board should consider whether the employer is likely to ignore less stringent Board remedies. *First Lakewood Associates v. NLRB*, 582 F.2d 416 (7th Cir. 1978). The ALJ found that the record attested to repeated violations in areas where J. P. Stevens had been ordered to effect remedies in the past. He concluded:

> [T]he propensity of that firm to ignore statutory remedies is underscored by the fact that, while the Wallace campaign was conducted within the protec-

> tive province of a contempt order, analysis of the evidence suggests convincingly that highranking officials of [the Company] acted deliberately and with a directness of purpose in contravening unmistakable statutory guarantees and the spirit of the contempt order to frustrate employee choice during that campaign.

In this light, we are especially disturbed by the Company's 1977 attempts to encourage employee repudiation of their authorization cards in testimony before the Board, conduct the Board found to be clearly coercive and violative of section 8(a)(1).[5] Leaving aside serious questions of witness tampering, we believe that such conduct forcefully demonstrates the Company's continuing intention to resist unionization at any cost. A rerun elec-

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[5] Each Wallace employee was required to attend a small meeting with plant management at which a prepared speech concerning unionization was presented; "round-table" discussions with the plant manager followed. Perhaps the most disturbing section of the speech stated:

> In the upcoming legal proceeding, those employees who signed cards prior to the last election will be called into court to testify about their signature. Unless an employee can prove that he/she was misled or deceived into signing a card, or fraud was involved, or the card was not signed by the employee, the Labor Board will count the card for the Union. If the union can get a majority of cards from employees working in 1974 counted by the Labor Board, then they will try to prove that the only reason they lost the election was because of three things we did.

That program must have been successful, for the ALJ found that approximately 40 employees gave intentionally inaccurate testimony repudiating their authorization cards.

Stevens' behavior is even more astonishing in light of a prior contempt order, *NLRB v. J. P. Stevens & Co.*, 464 F.2d 1326 (2d Cir. 1972), *cert. denied*, 410 U.S. 926 (1973), and the then-pending show-cause order, that it had received for its misconduct at the Wallace facilities. *NLRB v. J. P. Stevens & Co.*, 563 F.2d 8 (2d Cir. 1977), *cert. denied*, 434 U.S. 1064 (1978).

tion would clearly have been futile. "Employee sentiment once expressed through cards would, on balance, be better protected by a bargaining order." *Appletree Chevrolet*, 608 F.2d at 996.

III.

In addition to issuing a bargaining order, the Board ordered a broad range of other remedies as proposed by the ALJ. It imposed not only the customary remedial cease-and-desist and notice provisions, but also required Stevens to hold mandatory employee meetings at each plant at which the required notice would be read. It declined, however, to impose companywide access for the Union beyond that required in the Second Circuit's 1977 order in *NLRB v. J. P. Stevens & Co.*, 563 F.2d 8 (2d Cir. 1977), *cert. denied*, 434 U.S. 1064 (1978). Other affirmative remedies included orders that Stevens pay the Union's organization expenses plus interest for the 1974-75 Wallace campaign, and pay the litigation expenses plus interest of both the Board and the Union.

The Union argues for an expanded order. Stevens argues that the Board's affirmative remedies are improper, that the bargaining order was unwarranted, and that the imposition of the litigation and organization expenses was both unprecedented and unjustified by the facts.

The Union's contention is that the Board's remedies were inadequate. It argues that a companywide bargaining order, an interim dispute-resolution mechanism, and a make-whole remedy related to the profit-sharing plan are necessary to vindicate the section 7 rights of Stevens employees.

It is well settled that the Board's remedial power under the Act is "a broad discretionary one, subject to limited judicial review." *Fibreboard Paper Products Corp. v. NLRB*, 379 U.S. 203, 216 (1964). A Board order should be upheld unless shown to be "a patent attempt to achieve

ends other than those which can fairly be said to effectuate the policies of the Act." *Virginia Electric & Power Co. v. NLRB*, 319 U.S. 533, 540 (1943). After subjecting the Board's decision to our limited scope of review, we conclude that the Board's refusal to impose the additional sanctions requested by the Union is properly supported by the evidence.

Review of the record, briefs and oral argument demonstrates that Stevens' contentions concerning the notice and access provisions and bargaining order are meritless and require no extended discussion.

That portion of the order requiring reimbursement of organization and litigation expense, however, is another matter. Although we enforce it, it is recognized that this is an expansion by the Board of the use of this remedy and such expansion requires exploration and articulated reasoning by the Board before it may be ordered. The Board has a duty to alter its policies in response to new circumstances or past experiences, but when it deviates from prior precedents it must provide a reasoned explanation for the change. *J. P. Stevens Co. v. NLRB*, 623 F.2d 322 (4th Cir. 1980), *cert. denied*, 101 S.Ct. 856 (1981). This provides assurance that the prior standard is being changed, not ignored, and that the Board is faithful, and not indifferent, to the rule of law. *See Greyhound Corp. v. I.C.C.*, 551 F.2d 414 (D.C.Cir. 1977).

In obedience to the Act's requirement of remedial, rather than punitive, remedies, 29 U.S.C. § 160(c), the Board long refrained from awarding litigation or organization expenses against an employer. That well-established principle was modified almost a decade ago, however, when it was decided that imposing such expenses might be appropriate in certain specific situations. In *Tiidee Products, Inc.*, 194 N.L.R.B. 1234 (1972) (Supp. Decision), the Board ordered the reimbursement of litigation expenses after finding that the employer

had engaged in "frivolous" litigation.[6] Subsequent cases have further articulated this exception to the general rule and the distinction between defenses which are "debatable," rather than "frivolous." The Board's position was clearly set out in a 1974 decision:

> Thus, [prior] cases, when read together, indicated our intent to refrain from assessing litigation expenses against a respondent, notwithstanding that the respondent may be found to have engaged in 'clearly aggravated and pervasive misconduct' or in the 'flagrant repetition of conduct previously found unlawful,' where the defenses raised by that respondent are 'detatable' rather than 'frivolous.' Likewise, it was our intention, under similar circumstances, to refrain from ordering reimbursement of excess organizational costs although a nexus has been shown between such excess costs incurred by a union and the unfair labor practices committed by an employer.

Heck's, Inc., 215 N.L.R.B. 765, 767 (1974). *See also J. P. Stevens & Co. v. NLRB*, 612 F.2d 881 (4th Cir. 1980), *cert. denied*, 446 U.S. 916 (1980); *Winn-Dixie Stores, Inc.*, 224 N.L.R.B. 1418 (1976). The Supreme Court has expressly approved the Board's "debatable-frivolous" standard. *NLRB v. Food Store Employees Union*, 417 U.S. 1, 8-9 (1974).

The Board in *Heck's* concluded that an employer's defense was "debatable," thus precluding reimbursement of organization and litigation expenses, when it was based on resolving the credibility of witnesses. *Id.* at 768.

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[6] *Tiidee* was heard on remand from the District of Columbia Circuit Court of Appeals which had decided, contrary to the Board's first opinion in the case, that the Board *did* have statutory authority to impose such affirmative "make whole" relief. *Int'l Union of Electrical, Radio, and Machine Workers v. NLRB*, 426 F.2d 1243 (D.C. Cir.), *cert. denied*, 400 U.S. 950 (1970).

Stevens contends that its defenses were, therefore, clearly debatable. It argues that since numerous credibility determinations were necessary to the resolution of the section 8(a)(1) violation issues, its defenses to Board sanctions and suit were neither "patently frivolous" nor "clearly meritless on their face."

Under the *Heck's* standard, Stevens indisputably should be liable for those expenses resulting from the litigation of issues arising from the Wallace supervisors' illegal interference with the employees' access to the plants and distribution of literature. Stevens' defenses to these 8(a)(1) violations are clearly "frivolous."

The Board's order as it relates to reimbursement for expenses arising from other unfair labor practices, however, extends beyond the boundaries of *Heck's* and identifies a narrow new category of cases in which organization and litigation costs may be awarded.

Such an extension is in accord with the Board's suggestion in *Heck's* that the "debatable-frivolous" distinction might prove insufficient to cover every case involving organization or litigation expenses. The Board there expressly refused to limit future imposition of such awards to "frivolous" litigation:

> Whether, for instance, an award to compensate for excess organizational costs ought, in the future, to be considered as necessary to restoring the *status quo ante* in certain factual contexts rather than as an extraordinary remedy to be applied only in the case involving frivolous defenses, as we have heretofore held, is an issue which we do not intend here to foreclose from thorough consideration in future cases. Nor do we intend to exclude from consideration whether, in determining the appropriateness of awards of attorney fees, litigation costs, and excess organizational costs,. we ought to apply some more definitive criterion than the distinction between "de-

batable" and "frivolous" defenses which thus far we have been utilizing.

. . . .

It is, we believe, a continuing function of this administrative agency to consider on a case-by-case basis, in the light of both our experience and the facts of each case, what remedy will best remedy the misconduct found.

215 N.L.R.B. at 768.

The Board adopted the ALJ's reasoning which quoted the above language from its decision in *Heck's supra*. While acknowledging that the Board's remedial arsenal ought only to be tapped in the interest of safeguarding employee rights, the ALJ concluded that Stevens' "outrageous" behavior at Wallace gave rise to a new basis for the awarding of organization and litigation expenses. The ALJ noted that the 1974-1975 campaign at Wallace was the third Union organizational effort at those plants in the past 15 years. Neither prior campaign culminated in an election; rather they culminated in contempt citations against Stevens. Although the latest campaign was conducted under the safeguards of a prior contempt order from the Second Circuit, the ALJ found that Stevens persisted in "reversing the expressed choice of employees through unfair labor practices initiated at high management levels." Such behavior, the ALJ concluded, was sufficient to justify the award of organization and litigation expenses:

This record convincingly demonstrates that past efforts by the Union to organize employees at Wallace were abandoned in the face of flagrant behavior on the part of the [Company] which violated both the Act and outstanding court orders. Thus, the record herein warrants the conclusion that the Union in 1974 was required to engage in a renewal of a prolonged attempt at organization, requiring extraordi-

> nary expenditures, which it would not have sustained were Wallace employees afforded the opportunity to effect their right of self determination in an atmosphere free of employer misconduct. In view of the foregoing, restoration of the *status quo ante* to the extent possible is imperative, and saving the Union whole for unnecessary organizational costs is viewed as contributing to that end.
>
> . . . .
>
> [I]t shall [also] be recommended that the [Company] reimburse the Union for all reasonable and necessary costs incurred in litigating this proceeding. The predicate for such relief is not limited to the seriousness and sustained nature of the violations found herein, but also finds support in Stevens' policy of intransigence whereby court-enforced orders of the Board have been flouted and contempt decrees reduced to mockery.

Although it was not specifically requested, the ALJ also recommended that the Board be reimbursed for its litigation costs. He concluded that "it is only reasonable that the general tax paying community be relieved from shouldering the expenses entailed in protracted litigation at the hand of Stevens' lawlessness.

The Board did not abuse its discretion by ordering the award of organization and litigation expenses. "A remedy 'to effectuate the policies of . . . this [Act],' § 10(c), must dispel, compensate for, or at least neutralize, the frustrating effects of persistent illegal activity." *J. P. Stevens & Co., Inc. v. NLRB*, 417 F.2d 533, 541 (5th Cir. 1969). The Board may tailor the remedy so as to implement the purposes of the Act as they relate to the dispute as long as the order is remedial instead of punitive. *Republic Steel Corp. v. NLRB*, 311 U.S. 7 (1940). Many of the policy goals which lay behind the original "frivolous-debatable" exception, such as freeing crowded Board and court dockets, thus allowing more

rapid resolution of labor-management conflicts, *Tiidee Products, supra*, 194, N.L.R.B. at 1236; preventing "the employer from having a free ride during the period of litigation," i.e., from profiting by the delay, *Int'l Union of Electrical, Radio, and Machine Workers v. NLRB*, 426 F.2d 1243, 1251 (D.C. Cir.), *cert. denied*, 400 U.S. 950 (1970); and redressing litigation and organization expenses intentionally forced on an aggrieved party or Board by the employer's frivolous acts, *Wellman Industries, Inc.*, 248 N.L.R.B. No. 29 (1980), also are legitimate objectives for, and can be attained by, compensation for litigation and organization expenses in this type of case.

Also, since the litigation and organization expenses in this case are the direct consequences of the Company's unlawful behavior, they cannot be considered "collateral" under the doctrine of *Gullett Gin Co. v. NLRB*, 340 U.S. 361, 364 (1951). *See Wellman Industries, Inc.*, 248 N.L.R.B. No. 29 (1980).

In modifying or expanding its previous practice the Board cannot simply ignore that practice—"it must make a reasoned explanation for the change." *J. P. Stevens & Co. v. NLRB*, 623 F.2d 322, 329 (4th Cir. 1980), *cert. denied*, 101 S.Ct. 856 (1981). It has done so in this case by carefully articulating the reasons for the new rule and specific reasons for applying the rule to this case. The Company's history of litigation before the Board and in the courts, and its resolute resistance to unionization at any cost, may be without equal: almost thirty cases alleging Stevens' unfair labor practices have been decided to date. The Wallace management, having gained experience in labor relations froms years of skirmishing with the Union, nevertheless knowingly and willfully violated two contempt decrees imposed by a court of appeals. As the ALJ concluded:

> [T]he ability of the administrative-judicial system to withstand the Stevens assault upon its integrity

> is owing, in large measure, to the Union's vigilance, and unrelenting will to commit its legal resources to the fray. Were it to succomb [sic], the exploits of J. P. Stevens would serve as a historic touchstone for those who would defy the law by subjecting employee organization to the type of endurance struggle experienced here.

We agree. There is no question that the Board has the power to take J. P. Stevens' history of recalcitrance into account in designing its order. Indeed, it has an obligation to do so. *Textile Workers Union v. NLRB*, 475 F.2d 973, 976 (D.C. Cir. 1973).

Routinely imposing such expenses could, of course, tend to deter meritorious litigation by an employer, but we perceive no such intention on the part of the Board. We interpret the Board's expansion of its prior doctrine to be an extremely narrow one. Only in cases of flagrant, aggravated, persistent, and pervasive employer misconduct will the employer's meritless but arguably nonfrivolous litigation justify an award of litigation and organization expenses. It may well be that few employers other than J. P. Stevens—"The most notorious recidivist in the field of labor law," *NLRB v. J. P. Stevens & Co.*, 563 F.2d 8, 13 (2d Cir. 1977), *cert. denied*, 434 U.S. 1064 (1978)—will come within the narrow confines of this exception.[7]

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[7] Our emphatic, disapproving language regarding the Company's past behavior should not be misread as a presumption of wrongdoing or as the sole basis for our decision in this case. *Cf. Florida Steel Corp. v. NLRB*, 587 F.2d 735 (5th Cir. 1979) (unfair labor practice "cannot be based solely on the general bias or anti-union attitude of the employer"). As this court has recently noted, however, the Board—and, by inference, the court—need not blind itself to an employer's past infractions when deciding and remedying a case. *J. P. Stevens & Co. v. NLRB*, 638 F.2d 676 (4th Cir. 1980).

Since the Company is liable for the Union's litigation and organization expenses and the Board's litigation expenses, the Board, of course, must now determine the amount of these costs. Therefore, the case is remanded to the Board for an assessment of litigation and organization expenses against the Company in accordance with the views expressed in this opinion.

Enforced and Remanded for Determination of Expenses.

FIELD, Senior Circuit Judge, dissenting:

In *J. P. Stevens & Co., Inc. v. N.L.R.B.*, 638 F.2d 676 (4 Cir. 1980) [sic], the majority of a panel of this Court approved an order of the Board which had held certain language used by Stevens to be coercive even though we previously had found that such language constituted protected speech and was not violative of the Act. The sole basis for the Board's finding in that case was Stevens' long history of anti-union bias and litigation before the Board. In my judgment such action by the Board denied Stevens its rights under the First Amendment and Section 8(c) of the Act solely as punishment for its long history of union opposition, and I was prompted to observe, in dissent, that "such an attainder has no place in our national labor law."

The order of the Board in the present case awarding to the union its organization and litigation expenses carries that "attainder" even further. The majority finds the predicate for the award of these punitive expenses against Stevens to be "the company's history of litigation before the Board and in the courts, and its resolute resistance to unionization at any cost * * *." Slip Op. p. 20. Assuredly, none of the substantive issues raised by Stevens before the Board would justify such an award. With the possible exception of the leaflet episode, Stevens' defenses in this case were neither "patently frivolous" nor "clearly meritless on their face." To the contrary, each and every issue had substantial merit and Stevens was entitled to have those issues heard by a reasonably fair tribunal. Stevens has now been told by the Board and by the majority of this panel not only that it has lost on the issues but that it must pay a heavy price for its failure to prevail. The net effect of it is that Stevens may litigate before the Board in the future only at the risk of shouldering the litigation and organization expenses as penalties in the event it loses.[1]

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[1] The majority concedes that the award of such expenses could "tend to deter meritorious litigation by an employer". Slip Op. p. 21. It is suggested, however, that the expansion of the

In my opinion, this action of the Board oversteps the constitutional limits of due process and, in effect, denies Stevens access to the courts. I would reverse.

"debatable-frivolous" doctrine of *Heck's* is an extremely narrow one which will be applied to few employers other than Stevens. This, in my opinion, merely underscores the fact that Stevens is being denied its right to fair and equal treatment solely because of its anti-union history. It occurs to me that the cryptic assurance of the majority in footnote 7 that its language regarding Stevens' past behavior should not be construed as a presumption of wrongdoing will offer little comfort or guidance to Stevens and its counsel.

APPENDIX B

FJT

244 NLRB No. 82

D-4932
Wallace, N.C.

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

Cases 11-CA-6077 and
11-RC-3987

J. P. STEVENS & CO., INC.

and

AMALGAMATED CLOTHING AND TEXTILE WORKERS UNION, AFL-CIO-CLC, SUCCESSOR TO TEXTILE WORKERS UNION OF AMERICA, AFL-CIO

DECISION AND ORDER

On March 22, 1978, Administrative Law Judge Joel A. Harmatz issued the attached Decision in this proceeding. Thereafter, Respondent and the General Counsel filed exceptions and supporting briefs. The Charging Party filed cross-exceptions and a supporting brief, including a reply to Respondent's exceptions.[1]

[1] After the period for filing exceptions and briefs to the Administrative Law Judge's Decision expired, Respondent filed a motion to reopen the record and to conduct additional hearings. Respondent asserted that the evidence sought to be adduced would show numerous actions taken since the close of the hearing herein to assure compliance with the Act. The General Counsel and the Charging Party have filed briefs in opposition to Respondent's motion. We find that the evidence, even if establishing Respondent's assertions, would not in any way undercut our findings herein. Accordingly, Respondent's motion is denied. We also find no merit in the Charging Party's motion to strike Respondent's exceptions and portions of Respondent's supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[2] and conclusions[3]

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[2] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings. We also find no merit in Respondent's allegations of bias and prejudice on the part of the Administrative Law Judge. Thus, we perceive no evidence that the Administrative Law Judge prejudged the case, made prejudicial rulings, or demonstrated a bias against Respondent in his analysis or discussion of the evidence.

[3] We agree with the Administrative Law Judge that the Union has made a valid continuing demand for recognition sufficient to support a finding that Respondent has violated Sec. 8(a)(5) and (1) of the Act by refusing to recognize and bargain with the Union. Unlike the Administrative Law Judge, however, we date the bargaining order as of February 19, 1975, the date the record establishes that a majority of the unit employees designated and selected the Union as their representative for purposes of collective bargaining.

We further note that the Administrative Law Judge in his Conclusions of Law referred to the election in Case 11—RC—3987 as having taken place in 1974, 1975, and 1977. The record shows that the election was on February 19, 1975. Hence, we hereby correct the inadvertent references to 1974 and 1977.

Finally, we note that the Administrative Law Judge relied on *Shopping Kart Food Market, Inc.*, 228 NLRB 1311 (1977), in dismissing the Petitioner's Objection 8 in Case 11—RC—3987. In the absence of exceptions thereto, Chairman Fanning and Member Jenkins who dissented in *Shopping Kart*, find it unnecessary to pass on the merits of this objection in setting aside the election. Member Truesdale, who was not on the Board when *Shopping*

of the Administrative Law Judge, as modified herein.[4]

The General Counsel has excepted to the Administrative Law Judge's dismissal of the allegation that Respondent violated Section 8(a)(1) of the Act by "instruct[ing] its employees as to how they could invalidate union authorization cards when they were called as witnesses in a Board proceeding." In support of this allegation the General Counsel relied on a speech delivered by Respondent's plant managers on April 13 and 14, 1977, on round table discussions between employees and management officials that followed the speech, and on a notice posted by Respondent on April 26, 1977. The Administrative Law Judge found that this evidence furnished no basis for concluding that in the course of these events Respondent engaged in unlawful interrogation, solicited grievances, promised benefits, or made coercive threats. He further found that, apart from the speech, the evidence did not reveal specifically what was said by management representatives at the round table discussions. Finally, he said that he was unaware of precedent under the Act which condemns such conduct since it was unaccompanied by other forms of coercion. Accordingly, he found that the General Counsel had

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Kart issued, concurs fully in his colleagues' position. In addition, we note that *Shopping Kart* has been overruled recently in *General Knit of California, Inc.*, 239 NLRB No. 101 (1978).

[4] We find that the Administrative Law Judge's recommendation that Respondent first notify the Union and afford the Union an opportunity to consult with Respondent before Respondent takes adverse action for discipline against any employee or group of employees at the Wallace facilities is unwarranted. Hence, we shall not include this requirement in the Order. Finally, we shall modify the Administrative Law Judge's recommendation regarding the reading of the notice by (1) deleting the provision that the Union be afforded an opportunity to have a representative present; and (2) permitting Respondent the option of having a Board agent read the notice or, if the highest management official reads the notice, to afford the Board a reasonable opportunity to provide for the attendance of a Board agent.

failed to present a *prima facie* violation.[5] We find merit in the General Counsel's exceptions.

The gravamen of the General Counsel's allegation is a portion of the prepared speech read by Respondent's plant managers to small groups of employees at the Carter and Holly plants on April 13 and 14, 1977, just one month before the hearing in this case.[6] Thus, the plant managers said:

> In the upcoming legal proceeding, those employees who signed cards prior to the last election will be called into court to testify about their signature. Unless an employee can prove that he/she was misled or deceived into signing a card, or fraud was involved, or the card was not signed by the employee, the Labor Board will count the card for the Union.

Following the speech, Respondent invited the employees to express their views concerning any issue, including the hearing to be held in this proceeding, at round table discussions attended by management officials including the plant manager. Although there is record evidence that employees raised questions and discussed the circumstances surrounding the card signings at these meetings, there is no evidence as to questions, responses, or other expressions by Respondent's officials at these meetings.[7]

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[5] The Administrative Law Judge also found that the allegation has not been conclusively litigated and thus denied the General Counsel's motion to amend the complaint to incorporate this allegation. We note that there is no factual dispute as to the remarks by Respondent's plant managers in the prepared speech on April 13 and 14, nor as to the wording of the April 26 notice. Furthermore, we note that the exhibit describing remarks made at the round table discussions was submitted by Respondent. Thus, we find that the evidence upon which the General Counsel relies to support the allegation has been fully litigated and we hereby amend the complaint to incorporate this allegation.

[6] Additional portions of the speech are set forth in the Administrative Law Judge's Decision.

[7] Respondent also posted a notice pertaining to efforts by NLRB agents to consult with card signers in preparation for the instant

We find that Respondent's conduct was a thinly veiled attempt to color testimony in the upcoming Board proceeding. This patent attempt to encourage employees to invalidate authorization cards when they were called as witnesses, as the Administrative Law Judge aptly described, "carried all the earmarks of a deliberate design to capitalize upon a combination of fear and dimmed memories in the interest of influencing testimony to be afforded [sic] in this proceeding." Such conduct reasonably tended to coerce the employees in the exercise of their rights under the Act.[8] In finding that Respondent's conduct violated Section 8(a)(1), we have considered not only the circumstances immediately surrounding the speech but also Respondent's pattern of unlawful conduct in this and previous cases, as detailed in the Administrative Law Judge's Decision.[9]

Finally, we note that the Charging Party seeks certain remedies in addition to those recommended by the Administrative Law Judge that we have adopted. Considering Respondent's long history of violations of employee rights and its flagrant disregard of Board decisions and court orders, and for the reasons set forth

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hearing following the April speeches. That notice, which urged employees to testify truthfully, also stated:

> The NLRB agents are interested in whether you signed a card because you were misled into believing it was only to get an NLRB election, or pressured, or if you really intended to designate the Union as your agents. These are important legal questions which may determine whether you are unionized or not.

[8] It is well settled that a violation of Sec. 8(a)(1) does not turn on whether the coercion succeeded or failed. Rather, the test is whether the conduct reasonably tended to interfere with the free exercise of employees' rights under the Act. *Florida Steel Corporation*, 224 NLRB 45 (1976); *Hanes Hosiery, Inc.*, 219 NLRB 338 (1975).

[9] *Florida Steel Corporation*, 233 NLRB No. 74 (1977), enforcement denied 587 F.2d 735 (5th Cir. 1979).

in earlier cases involving Respondent,[10] we shall grant the following additional remedies: union access to bulletin boards and lists of employees' names and addresses, and in-plant access for the Union. In addition, we shall require Respondent to include in appropriate company publications, such as employee newsletters, a copy of the notice, together with Appendix B attached hereto, an explanatory letter, and we shall order Respondent to issue written instructions to all of its supervisors at the facilities involved herein to comply with the notice to employees marked "Appendix A."

ORDER

Pursuant to Section 10(c) of the National Labor Act, [sic] as amended, the National Labor Relations Board hereby orders that the Respondent, J.P. Stevens & Co., Inc., New York, New York, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain in good faith with Amalgamated Clothing and Textile Workers Union, AFL-CIO-CLC, as the exclusive collective-bargaining representative of employees in the unit found appropriate below for purposes of collective bargaining. The bargaining unit is:

> All production and maintenance employees employed at the Employer's Carter plant, Holly plant, and warehouses at Wallace, North Carolina, including plant clerical employees, watchmen, computer programmer in the dye house, electrical technician, and plant driver; excluding office clerical employees, professional employees, cloth store clerk, managerial employees, guards and supervisors as defined in the Act.

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[10] See *J. P. Stevens & Co., Inc.*, 239 NLRB No. 95 (1978), and 240 NLRB No. 35 (1979).

(b) Impeding employees in their right to distribute union literature in nonworking areas on nonworking time by promulgation, maintenance, or enforcement of any rule prohibiting employees from engaging in such activity, by physically obstructing them, threatening to call local law enforcement authorities, suspending them, or by in any other manner interfering with their right to engage in such activity protected by Section 7 of the Act.

(c) Engaging in surveillance of employees engaged in the distribution of union literature in nonworking areas on their own time, or creating the impression that union activity is the subject of surveillance.

(d) Threatening employees with discharge because of their union activity.

(e) Instructing employees to report to the Respondent the union activities of other employees.

(f) Granting benefits to employees to discourage them from engaging in activities in support of a union. However, nothing herein shall be construed as requiring Respondent to vary or abandon any economic benefit or term and condition of employment which its employees at its Wallace facilities, or any other facilities, would otherwise be entitled to receive. Benefits shall not be denied to employees at Respondent's Wallace facilities, or at any other of its facilities, that such employees would have received but for their support of a union or for their involvement in protected concerted activities.

(g) Instructing employees as to how they could invalidate union authorization cards when they are called as witnesses in a Board proceeding.

(h) In any other manner interfering with, restraining, or coercing employees in the exercise of their right to self-organization, to form, join, or assist the aforesaid union, or any other labor organization, to bargain col-

lectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or mutual aid or protection, and to refrain from any or all such activities.

2. Take the following affirmative action which is deemed necessary to effectuate the policies of the Act:

(a) Upon request, bargain with the aforesaid Union, as the exclusive representative of all employees in the appropriate union described above and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Make whole the Union for all reasonable and necessary organizational costs and expenses sustained during the campaign at Wallace, North Carolina, between September 1974 and February 1975, including, but not limited to, salaries, travel expenses, subsistence, materials, rents, cost of printing, and postage fees, the total amount due under this provision to include interest as set forth in the section of the Administrative Law Judge's Decision entitled "The Remedy."

(c) Make whole the National Labor Relations Board and the Union for the reasonable costs and expenses incurred by them in the investigation, preparation, presentation, and conduct of this proceeding, said sums to include interest as set forth in the section of the Administrative Law Judge's Decision entitled "The Remedy."

(d) Post in conspicuous places at all its plants copies of the attached notice marked "Appendix."[11] Copies of said notice, on forms provided by the Regional Director for Region 11, after being duly signed of behalf of Re-

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[11] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

spondent by its president, the chairman of its board of directors, by each of the members of the board or [sic] directors, and by the highest managerial official of the plant in which the notice is posted, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(e) Reproduce and mail to the home of each of its employees at all of its plants a facsimile of the aforesaid signed notice, together with a letter appended hereto as "Appendix B." Said letter shall be reproduced on the Company's regular business stationery and signed by the highest official of the recipient's plant. Respondent shall provide the Regional Director for Region 11 with proof of such mailing.

(f) Reproduce and give to each supervisor at its Wallace, North Carolina, facilities a facsimile of the aforesaid signed notice, and give written instructions, signed by the highest official at each facility, to each supervisor to comply with the provisions of the notice. Respondent shall provide the Regional Director for Region 11 with proof of compliance with this paragraph.

(g) At such reasonable time after the entry of this Order, as the Board may request, convene during working time by departments and shifts all its employees in each of its plants, and, at its option, either have the notice read by the highest managerial official in the plant or provide facilities and permit a Board agent to read the notice to the said employees. In the event Respondent chooses to have the notice read by its official, the Board shall be afforded a reasonable opportunity to provide for the attendance of a Board agent.

(h) Upon request of the Union, made within 2 years from the date hereof, immediately grant the Union and

its representatives reasonable access to the plant bulletin boards and all places where notices to employees are customarily posted, at each of Respondent's plants, for a period of 1 year from the date of request.

(i) In the event that during a period of 2 years following entry of this Order any supervisor or agent of Respondent convenes any group of employees at any of Respondent's plants and addresses them on the question of union representation, give the Union reasonable notice thereof and afford two union representatives a reasonable opportunity to be present at such speech and, upon request of said representatives, permit one of them to address the employees for the same amount of time as Respondent's address.

(j) If, within the next 2 years, the Board schedules an election in which the Union participates at any of Respondent's plants, then, upon request by the Union, afford at least two union representatives reasonable access to each of Respondent's said plants and appropriate facilities to deliver a 30-minute speech to employees on working time, the date thereof to be within 10 working days before but not within 48 hours prior to any such election.

(k) Upon request of the Union, immediately furnish it with lists of the names, addresses, and classifications of all of Respondent's employees at each of its plants as of the latest available payroll date, and furnish a corrected, current list to the Union at the end of each 6 months thereafter during the 2-year period referred to above.

(l) For the 2-year period, upon request of the Union, without delay, permit a reasonable number of union representatives access for reasonable periods of time to all its canteens and rest and other nonwork areas, including parking lots, within each of its plants, for the purpose of communicating orally and in writing with the employees in such areas during changes of shift,

breaks, mealtimes, or other nonwork periods. Respondent shall formulate rules on this subject in the same manner as provided in *J. P. Stevens & Co., Inc.*, 239 NLRB No. 95 (1978).

(m) Notify the Regional Director for Region 11, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the election conducted in Case 11-RC-3987 on February 19, 1975, be, and it hereby is, set aside, and that the petition be dismissed.

IT IS FURTHER ORDERED that the allegations of unlawful conduct not specifically found to be violative herein shall be dismissed.

Dated, Washington, D.C. August 20, 1979

[SEAL]

JOHN H. FANNING, Chairman

HOWARD JENKINS, JR., Member

JOHN C. TRUESDALE, Member

NATIONAL LABOR RELATIONS BOARD

APPENDIX A

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

After a hearing at which all parties were represented by their attorneys and afforded the opportunity to present evidence in support of their respective positions, it has been found that we have violated the National Labor Relations Act in certain respects and we have been ordered to post this notice and to carry out its terms.

The National Labor Relations Act gives you, as employees, certain rights, including the right:

To engage in self-organization

To form, join, or help a union

To bargain collectively through a representative of your own choosing

To act together for collective bargaining or other mutual aid or protection

To refrain from any or all of these things.

Accordingly, we give you these assurances:

The Amalgamated Clothing and Textile Workers Union, AFL—CIO—CLC, is the recognized collective-bargaining representative of our hourly employees at Wallace, North Carolina.

WE WILL NOT refuse to bargain in good faith for a collective-bargaining agreement with the aforesaid Union regarding wages, hours, and working conditions of the employees at Wallace, North Carolina, nor will we take action affecting wages, hours, and working conditions of such employees without negotiating first with the Union.

WE WILL NOT preclude our employees by posted rule, or oral instruction, from engaging in the distribution of union literature in nonworking areas on their time.

WE WILL NOT prevent employees from distributing union literature on their own time, by physical obstruction, by threatening to call or calling law enforcement authorities, or by telling them that they are suspended.

WE WILL NOT engage in surveillance of employees, nor will we create the impression that we are spying on employees while they are engaged in union activity.

WE WILL NOT tell our employees to report on union activities engaged in by fellow employees.

WE WILL NOT tell our employees how they can invalidate union authorization cards when they are called as witnesses in a Board proceeding.

WE WILL NOT threaten to discharge employees because of their union activity.

WE WILL NOT grant benefits to employees to discourage them engaging in activities in support of a union. However, nothing herein shall be construed as requiring us to vary or abandon any economic benefit or term and condition of employment which our employees at our Wallace facilities, or any other facilities, would otherwise be entitled to receive. Benefits will not be denied to employees at our Wallace facilities, or at any other of our facilities, that such employees would have received but for their support of a union or for their involvement in protected concerted activities.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their rights under the National Labor Relations Act.

WE WILL compensate the Union and the Board for their expenses in preparing for and in conducting this case, and we will compensate the Union for its expenses incurred during the organizational campaign at Wallace between September 1974 and February 19, 1975.

WE WILL, upon request, bargain with the aforesaid Union, as the exclusive representative of all employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

> All production and maintenance employees employed at the Employer's Carter plant, Holly plant, and warehouses at Wallace, North Carolina, including plant clerical employees, watchmen, computer programmer in the dye house, electrical technician, and plant driver; excluding office clerical employees, professional employees, cloth store clerk, managerial employees, guards and supervisors as defined in the Act.

WE WILL send to all our employees copies of this notice, with an explanatory letter; WE WILL read this notice to all our employees; WE WILL give all our supervisors at our Wallace, North Carolina facilities copies of this notice and instruct them to comply with its provision; and WE WILL grant the Union, as ordered, access to our bulletin boards, access to our nonwork areas, speaking opportunities, and lists of the names and addresses of our employees at many of our plants.

J. P. STEVENS & CO., INC.
(Employer)

Dated _____ By _____
(Representative) (Title)

_____
President

_____
Chairman, Board of Directors

_____
Member, Board of Directors

_____
Member, Board of Directors

_____
Member, Board of Directors

_____
Member, Board of Directors

_____
Plant Manager

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, US Courthouse, Federal Building, 251 North Main Street, Room 447, Winston-Salem, North Carolina 27101, Telephone 919-761-3212.

APPENDIX B

Dear Stevens Employee:

This letter, and the enclosed notice, is being sent to all J. P. Stevens employees to inform you of a recent decision by the National Labor Relations Board * relating to the Stevens plants in Wallace, North Carolina.

In 1974 and 1975, the Textile Workers Union of America, AFL-CIO, now the Amalgamated Clothing and Textile Workers Union, AFL-CIO-CLC, was engaged in an attempt to organize the Company's employees at the Carter and the Holly plants in Wallace. After a hearing, the Labor Board found that the Company violated the law by interfering with employee distribution of literature, by spying on employees while they were engaged in union activities, and by threatening employees with discharge because of their union activities. The Labor Board also found that the Company violated the law by changing the profit-sharing plan and by granting supplementary unemployment benefits. In addition, the Board found that the Company violated the law by telling the employees how they could invalidate union authorization cards when they were called as witnesses in a Board proceeding. The Board held that these and other violations of the law by the Company at the Wallace plants made the union authorization cards signed by employees at the Wallace plants a more reliable indication of employee choice as to whether they wanted the Union to represent them than the results of the February 19, 1975 election. The Board found that a clear majority of the employees signed union authorization cards indicating that they wanted the Union to represent them. Accordingly, the Labor Board directed the Company to bargain with the Union as the exclusive representative of the employees and if an agreement is reached to sign a contract covering the agreed upon terms.

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* Should the Board's order be enforced, add here: ", approved by a United States Court of Appeals.".

As you can see from the attached notice, the Company has promised that, in the future, we will comply in good faith with the labor laws. Also, the Company has promised to compensate the Union and the Government for their losses arising out of the violations found. Therefore, anything that you have heard which would indicate that the Company does not intend to comply in good faith and fully abide by the nation's labor laws, at any of its plants, is completely erroneous.

Sincerely yours,

(Plant Manager)

JD-176-78
Wallace, NC

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

Cases Nos. 11-CA-6077
11-RC-3987

J. P. STEVENS & CO., INC.
and
AMALGAMATED CLOTHING AND TEXTILE WORKERS UNION, AFL-CIO-CLC, Successor to TEXTILE WORKERS UNION OF AMERICA, AFL-CIO

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AMALGAMATED CLOTHING AND TEXTILE WORKERS UNION, AFL-CIO-CLC, Successor to TEXTILE WORKERS UNION OF AMERICA, AFL-CIO

Paris Favors, Jr., Esq., and *Jack E. Ruby, Esq.*, of Winston-Salem, NC, for the General Counsel.

Robert Tim Brown, Esq., of New York City, NY; *Harold McIver*, Coordinator-director, Industrial Union Department, AFL-CIO, of Charlotte, NC, *P.R. Pope*, Representative, Amalgamated Clothing & Textile Workers Union, of Wallace, NC, for the Charging Party-Petitioner.

L. Gray Geddie, Jr., Esq., Gardner G. Courson, Esq., and *Martha L. Clewis, Esq. (Ogletree, Deakins, Smoak and Stewart)*, of Greenville, SC, for the Respondent-Employer.

DECISION

Statement of the Case

JOEL A. HARMATZ, Administrative Law Judge: This consolidated proceeding originates with the filing of an election petition in Case No. 11-RC-3987 on December

17, 1974. Thereafter, pursuant to a Decision and Direction of Election issued by the Regional Director for Region 11 on January 20, 1975, a secret ballot election was conducted on February 19, 1975. The tally of ballots showed that of approximately 1,014 eligible voters, 1 ballot was void, 404 cast ballots for, and 549 against, the Petitioner, with 3 nondeterminative challenges. Thereafter, the Petitioner filed timely obections to conduct affecting the results of the election. Subsequently, on March 10, 1975, the Acting Regional Director for Region 11, issued a "Supplemental Decision, Direction and Notice of Hearing" concluding that Petitioner's objections raised material and substantial issues best resolved on the basis of record testimony and accordingly he directed a hearing on objections 1 through 9.

On April 14, 1975 an unfair labor practice charge was filed in Case No. 11-CA-6077. Pursuant thereto, on January 20, 1977, the Regional Director for Region 11 issued "An Order Consolidating Cases, Complaint and Notice of Hearing," alleging that Respondent independently violated Section 8(a)(1) of the Act by various acts of coercion impeding employees in exercising their right to organize and support the Charging Party-Petitioner, and further alleging that Respondent violated Section 8(a)(5) and (1) of the Act by refusing to recognize and bargain with the Charging Party-Petitioner as the majority representative of employees in the appropriate unit. In this latter respect, the complaint alleges that the independent violations of Section 8(a)(1) of the Act were calculated to undermine the Union and destroy its majority status, the predicate for a remedial bargaining order under authority of *N.L.R.B. v. Gissel Packing Co.*, 395 U.S. 575 (1969) and *Trading Port, Inc.*, 219 NLRB 298 (1975). By virtue of said consolidated complaint, Case No. 11-RC-3987 and Case No. 11-CA-6077 were consolidated for hearing, ruling and decision by an administrative law judge. In its

duly filed answer to said complaint, Respondent denied that any unfair labor practices were committed.

Pursuant to the foregoing, a hearing was conducted before the undersigned in Wilmington, North Carolina on various dates between May 16 and August 3, 1977. After close of the hearing, briefs were filed on behalf of the General Counsel, the Charging Party-Petitioner, and the Respondent-Employer.

Upon the entire record in this proceeding, including my personal observation of the witnesses while testifying and their demeanor and consideration of the posthearing briefs, I hereby find as follows:

Findings of Fact

I. The Business of the Respondent-Employer

Respondent-Employer is a Delaware corporation engaged in the manufacture and sale of textile products at its Wallace, North Carolina, plants, the sole facilities involved in this proceeding. During the 12-month period preceding issuance of the complaint, a representative period, Respondent-Employer received goods and materials at said locations from points directly outside the State of North Carolina valued in excess of $50,000, and also manufactured at said plants and shipped directly to points outside the State of North Carolina, products valued in excess of $50,000.

II. The Status of the Charging Party-Petitioner.

The Merger Issue

Respondent-Employer admits that the Amalgamated Clothing & Textile Workers Union, AFL-CIO-CLC, and the Textile Workers Union of North America, AFL-CIO (TWUA) are labor organizations within the meaning of Section 2(5) of the Act, but denies that the former is a successor to TWUA. Through this denial, Respondent-

Employer interposes a defense of critical import to the effective redress of any unlawful conduct found herein.

In this connection, it is noted that the instant case emerges from an organization campaign waged by the TWUA between September 1974 and February 19, 1975. Following the conclusion of this effort, on June 2, 1976, TWUA merged with the Amalgamated Clothing & Textile Workers Union, AFL-CIO-CLC, the Charging Party-Petitioner herein. As I understand Respondent's position, it is claimed that, as no lawfully cognizable successorship exists, the Charging Party-Petitioner may not avail itself of any remedial interest which might have accrued to TWUA in consequence of that campaign.

In *American Enka Company*, 231 NLRB No. 140,[1] the Board, after full examination of the nature of the merger and the circumstances under which it was effected, concluded that, as the consolidation preserved the continuity of the TWUA, which continued to serve as the day-to-day representative of employees, the Charging Party-Petitioner. ". . . is a continuation of . . . [TWUA] . . . and therefore has succeeded to its representation rights." [2] That case involved an election conducted some 6 months before the effective date of the merger. In that election, the TWUA was designated by a majority. In the course of a post-election proceeding concerning employer objections to the validity of that election, the successorship issue was raised by a motion to change the name of TWUA to that of the Charging Party-Petitioner herein. In sustaining that motion, the Board not only confirmed the existence of a binding successorship, but went on to conclude that the representation rights accorded thereby to the Charging Party-Petitioner would not be impaired

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[1] See also the decision of Judge Bernard Ries, issued on December 21, 1977 relative Respondent's Roanoke Rapids plant. *J.P. Stevens & Co., Inc.*, JD 871-77, pages 2-3.

[2] 231 NLRB No. 140, page 8.

even though employees previously subject to an organization campaign neither participated in the merger decision, nor ratified it.[3]

Unlike the employees at *American Enka, supra*, the Wallace employees were never informed of the contemplated merger,[4] nor were they invited, after the merger, to express their views in this regard.

Nonetheless, the testimony of Scott Hoyman, the Southern director of the Textile Division of the Charging Party-Petitioner,[5] dispells [sic] any notion that, under established union policies, the noninvolvement of Wallace employees was founded upon arbitrary considerations. He testified that in accordance with union practices execution of a blue authorization card in the course of an election campaign does not accord the rights and benefits of full union membership. Employees are only admitted to membership after a chartered local is established, an event normally deferred until after execution of a collective-bargaining agreement.[6]

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[3] The Board did acknowledge facts showing that prior to the election in that case, the employees were apprised that the merger was under consideration. Furthermore, it was also noted that, following the election, a union meeting was conducted in which employees unanimously expressed their assent thereto.

[4] The merger discussions began in 1975, but apparently did not open until after conclusion of the election of February 19, 1975 at the Wallace facilities.

[5] Prior to effective date of the merger, Hoyman occupied essentially the same position with TWUA.

[6] The only exception to this constitutional requirement relates to chartered locals established at J.P. Stevens plants in Roanoke Rapids, North Carolina, and Statesboro, Georgia. In both instances, TWUA had achieved the status as statutory representative of employees at those locations, and due to lengthy negotiations and pending unfair labor practices against the Company, special resolutions were adopted by the Union's 1976 convention, authorizing the issuance of charters establishing locals at said facilities.

Consistent with the foregoing, employees who signed authorization cards during the Wallace campaign were not notified of the possible merger, did not participate in the decision, and were not afforded an opportunity to express their sentiment thereafter. Such variation from the facts considered in *American Enka* merits no different result. Thus, in accordance with the Board's holding in *American Enka*, the structure of the TWUA was retained after the consolidation, and the merger did not affect the identity of either union representatives or the organizational structure within which they served as the representative of employees. For this reason, the Board held that the legal efficacy of the successorship was unhampered by the question of whether employees, who were subject to an active organization campaign at the time of the merger's approval, participated in or were offered an opportunity to ratify. Extension of this view to the instant proceeding simply endorses a constitutional denial of membership benefits to nonmembers whose affinity to TWUA was inchoate and evidenced solely by designation of that union as their representative in the course of an organization campaign. The internal union policy in this respect, while consistent with legitimate substantive and administrative interests of the Union, in the circumstances, does not impede employee free choice and is inoffensive to statutory policies.

Accordingly, I conclude that the Charging Party-Petitioner constitutes a continuation of TWUA, and that it succeeds to the organizational interests of TWUA, which were pending on the effective date of the merger, including all representation rights emerging from the 1974-1975 organizational campaign conducted at Wallace, which are in issue in this proceeding.

III. Case No. 11-CA-6077

A. *The Issues*

This consolidated proceeding presents another phase in the ongoing litigation involving labor relations practices

of J.P. Stevens & Co., the multi-state textile manufacturer dubiously described by at least one authority as having ". . . earned the . . . reputation as the 'most notorious recidivist' in the field of labor law."[7] Involved here are the Stevens facilities in Wallace, North Carolina—the Carter plant, the smaller Holly plant, and the Uptown warehouse. The principal issues relate to the time frame—September 1974 through February 19, 1975—dates which mark the duration of the third separate effort to organize the Stevens work force in the Wallace area.

As heretofore indicated, on February 19, 1975, an election was conducted among said employees in which the Union failed to receive a majority of the valid ballots cast. This proceeding is concerned essentially with the question of whether, in the foreground of that election, Stevens engaged in preelection misconduct and independent unfair labor practices of sufficient consequence to dissipate the majority allegedly held by the Union on that date and to warrant a remedy requiring Respondent to recognize the Union as the majority representative of employees at the Wallace locations in accordance with *N.L.R.B. v. Gissel Manufacturing Company, supra.*

With respect to the refusal to bargain issue, in addition to the formidable question as to whether the Union ever achieved majority support, the appropriateness of an 8(a)(5) remedy in this case turns essentially upon independent 8(a)(1) allegations relative to: (1) the interference with employee distribution of union literature within the plant proper during shift changes commencing on the evening of February 18 and through the day of the election, February 19, 1975; (2) the announcement and implementation on January 21, 1975 of a "floor" or guar-

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[7] See *N.L.R.B. v. J.P. Stevens & Co., Inc., et al.* (Stevens XVIII), —— F.2d —— (C.A. 2, August 31, 1977).

antee against declining values of employee holdings under the Stevens profit-sharing plan, and (3) the grant of a supplementary unemployment benefit payment to certain employees announced on February 11, 1975.

In addition to these issues, unfair labor practices are attributed to the Respondent-Employer through coercive statements by named supervisors on three different occasions.

Finally, while Petitioner's objections for the most part are coextensive with the 8(a)(1) allegations, other alleged misconduct not specified in the complaint is involved, including questions as to whether the employer unlawfully interfered with the Union's utilization of designated observers during the election, and whether the Employer impaired the Petitioner's exercise of rights granted by the United States Court of Appeals for the Second Circuit in a contempt adjudication, issued on September 13, 1972.

B. *Concluding Findings*

1. Interference, Restraint and Coercion

a. *Interference with employee distribution*

The Holly and Carter plants operate on a three shift basis, with shift change intervals at 12 midnight, 8 a.m. and 4 p.m. Prior to February 18, 1975, the Union's effort to communicate with employees through distribution of campaign literature was confined to handbilling at access gates on the perimeter of Respondent's premises and off company property.

On February 18, 1974 [sic] the day before the election the Union elected to engage in on-premises distribution through employee organizers. Beginning at about 11:30 p.m., shortly before the midnight shift change, on February 18, and continuing until 4 p.m. on February 19, em-

ployees attempted to pass out union literature inside the Carter and Holly plants.[8]

Management first learned of the Union's shift in strategy shortly before commencement of the third shift on February 18, 1975, when, at about 11:30 p.m., employee organizers first appeared with union literature in areas adjacent to entrances on the interior of both the Holly and Carter plants.

The complaint names eight different supervisors as having participated in the unlawful effort to frustrate this attempt by employees to exercise their Section 7 rights. It is further alleged that, in the course of said interference, certain of these supervisors independently violated Section 8(a)(1) of the Act by threatening employees that law enforcement authorities would be called to remove them from the premises, by ordering certain employees to leave the plant because they engaged in such activity, by threatening to have employees physically removed from the plant, and by engaging in surveillance of employees while they attempted to distribute union literature.

With respect to the Holly plant, employees Linda Teachey and Betty Whitfield, both assigned to the third shift, commenced distributing literature at the employee entrance to that facility at about 11:15 p.m. on February 18. Employees on entering that access, first traverse a set of stairs to a level 4 to 5 feet above the ground and enter the plant through a glass and metal door. On the

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[8] The notice of election reveals that polling was scheduled at the Carter plant on February 19, 1975 during the following periods:

6 a.m. to 10 a.m.
4:30 p.m. to 6 p.m.

Similarly, polling was conducted at the Holly plant, during the following time frames:

7:30 a.m. to 9 a.m.
4:30 p.m. to 5 p.m.

interior of the entranceway is a vast open area which at one time was used for storage. Walking lanes for employees are marked off as a safety innovation, which isolates their passageway from an area in which forklifts operate some 3 times a day to load trucks parked at the nearby loading docks. It was in this area immediately inside the door, that Teachey and Whitfield were distributing literature when approached by Bennett Hanchey, an admitted supervisor. Hanchey testified that he observed them distributing union literature, which he assumed to be prounion, and that he noticed a box of union buttons on a nearby table. He claims that he told the employees ". . . that they were not supposed to be there, and it was too early for them to be at work . . .," and urged them to ". . . please go back to your car . . . or go on to the commissary, or work area and wait until it was time to go to work."[9] When the employees stood fast, Hanchey admittedly told them that if they refused to leave, he would call his superior to determine what would be done next.[10] The employees refused to leave so Hancey left to seek instructions. Hanchey testified that when he returned to the entrance, Whitfield and Teachey were no longer present.

Teachey did not testify. The testimony of Hanchey and Betty Whitfield is in conflict only insofar as she testified that Hanchey initially told them that they ". . . couldn't

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[9] Hanchey admitted that it was not uncommon for employees to appear inside the plant prior to their work shift, and that there was no prohibition against employees being on the premises at such time.

[10] Hanchey testified that he called his superior, Vaden Scholar, who advised that he call Jim Wellons, the plant manager. Wellons instructed Hanchey to get a witness and return to the entrance to inform the employees that they were at the plant too early, and should go to the parking lot, commissary or work area until their shift began. Hanchey claims that Wellons instructed him to back off and take no further action, if the women refused to remove themselves.

pass out leaflets, that we'd have to move, and if we didn't move, he'd have someone to move us." When Whitfield advised Hanchey of the employees' right to pass out leaflets at that location, Hanchey repeated ". . . if you don't move, I'll get someone who will move you." After this, Whitfield and Teachey engaged in no more distribution, but simply left the union literature behind, and went to their work stations.

Later, still prior to the commencement of the third shift, Bernice Jenkins, a first shift employee, appeared at the location vacated by Whitfield and Teachey and resumed the distribution of literature. When Hanchey returned, according to his testimony, he reiterated to Jenkins the message previously conveyed to Teachey and Whitfield. Jenkins testified that Hanchey told him to leave the area, and further related that he responded to Hanchey by referring him to the fact that the Federal Government gave employees a right to engage in union activity and to distribute literature in nonworking areas on nonworking time. Hanchey then indicated that he had been ". . . instructed to tell you . . . if you don't leave, I'm going to call somebody and have you removed." With this, Jenkins stepped out the door and continued to distribute union literature on the adjoining platform without further disruption.

I credit the testimony of Whitfield and Jenkins to the effect that Hanchey, after the employees indicated a disinclination to adhere to his instruction to leave the plant interior, threatened to have them removed. The testimony of Whitfield and Jenkins imputes a consistent pattern of conduct to Hanchey, and in the circumstances, it struck me as probable that he took the forceful approach to which the employees attest. It is noted in this connection that, as of the time of the hearing, Bernice Jenkins was an incumbent employee of the Respondent.

Handbilling began inside the Carter plant at about the same time as the Holly facility. Access to the larger

Carter plant is available through two entrances, the main entrance and the so-called north entrance. Each entrance has an airlock which separates the exterior doors from the interior doors leading into the plant proper. At the more frequently used main entrance, the airlock is approximately 6 feet by 10 feet in dimension. The north entrance contains a smaller airlock which measures 3 feet by 5 feet.

William A. Stallings, a supervisor on the second shift at the Carter plant, testified that at about 11:45 p.m. on February 18, 1975, he was informed that employees were distributing union literature at the north entrance to the Carter plant. Together with supervisor Robert Piercy, Stallings went to that location, where two employees Billy Humphrey and Robert Glasper were distributing union literature. According to Stallings, Piercy informed the employees that it was against company rules to pass out union literature inside the plant and that they were to leave the building. The employees indicated that they would not do so, advising that a union official had informed them of their right to distribute literature inside the plant. Stallings admits that when the employees indicated that they would not leave, Piercy indicated that he would call the law. Humphrey then left, and Glasper went outside the door, where he continued to pass out leaflets. Stallings admits that he remained at the airlock, watching Glasper pass out leaflets for some 3 or 4 minutes thereafter.

Stallings and Piercy then went to the main entrance where 4 or 5 employees were passing out literature in the airlock at that location. The employees were informed that they would have to go outside, and when they refused to leave, Piercy again threatened ". . . to call the law. . . ." Later, supervisor Larry Keir admittedly received a report that plant manager Shelton had issued an instruction that employees engaged in handbilling be sent home and told that they should not return to the

plant until notified. Pursuant thereto, supervisor Larry Keir told third shift employees David Robinson and Larry Glasper to leave the plant and go home.[11]

On the day of the election, the effort to reach employees through inplant distribution resumed at the Carter plant about one-half hour before the commencement of the first shift. Thus at about 7:30 a.m., employees Violet Futrell Hatcher, Marie Eury, and Gloria Kennedy were passing out union literature in the airlock. Supervisor Robert Cranford, in the company of supervisors Kier and Shuffler, received information to this effect and proceeded to the main entrance, where according to Cranford's own testimony, he informed the employees ". . . that they could not pass out literature in the plant and that they would have to leave." [12] The three employees left the airlock and went to the pavement below. Cranford followed. Futrell advised Cranford that he would not have to escort them, for they knew the way to the gate.[13]

The largest and most dramatic of the confrontations between supervisors and employee organizers occurred between 3 and 4 p.m. on the day of the election at the main entrance to the Carter plant. Prior to this encounter, Cranford together with supervisor Hazel Kirkland confronted employee Doug Ray, who was handbilling at the north entrance. After Cranford told Ray that ". . . he could not pass out literature in the plant," Ray departed. Cranford and Kirkland then went to the main

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[11] Neither Robinson nor Glasper lost any time as a result of this instruction. Both indicated that after consulting with union officials at the gate, they reported for work as usual. Kier during their shift apparently countermanded the earlier suspension of these employees.

[12] Although Cranford testified that it was two employees who were engaged in handbilling on that occasion, from the testimony of Hatcher, Kennedy, and Eury, I find that all three were present.

[13] Cranford's testimony that he went outdoors on that occasion to check to see if it was raining did not have a ring of truth.

entrance. When they arrived it does not appear that any employees were in the airlock, but they were on the front steps. Later, supervisors Osbert Fussell, William A. Stallings, Davis A. Chestnutt, and Henry Latimore joined Cranford and Kirkland outside the door to the main entrance. On several occasions during this confrontation, certain employee organizers manifested their intention to enter the airlock to distribute literature. The supervisors formed a cordon, physically obstructing their access, with Cranford informing the employees that they could not give out literature inside the plant. The employees insisted that they had a right to distribute literature inside the plant, and, as the argument continued, Cranford admittedly told the employees that he would call the law if they did not leave. Supervisor Kirkland actually left the area to call the police.[14] Cranford admits that prior to this incident, supervision was instructed to forbid entry to the plant to employees seeking to distribute literature. He also admits that he remained on the porch outside the airlock for a period of 30 minutes, of which the confrontation with employees attempting to enter the plant lasted some 5 to 10 minutes. During this period union sympathizers attempted to handbill other employees entering and leaving the main entrance.

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[14] Cranford claims that he felt threatened and took steps to call the law only because the situation had reached explosive proportions. I was not convinced. His testimony that he was pushed in the course of that incident by Jimmy Smith was not referred to initially when Cranford was specifically questioned as to the various aspects of the confrontation that led to the so-called explosive condition. While his subsequent testimony in this respect seemed exaggerated and contrived, it was my impression from all the surrounding circumstances, that any temperament that may have been exhibited that day was provoked by the action of Respondent's supervisors in physically obstructing employees from vindicating their right to engage in distribution of union literature during their own time, in nonworking areas inside the plant proper. Accordingly, Cranford's threat to enlist the aid of law enforcement authorities in furtherance of the Company's unlawful position constituted a further interference with statutory rights.

The foregoing substantiates, in their entirety, the various allegations in the complaint pertaining to the interference with access to plant premises for the purposes of distributing union literature. The reaction, from the outset, on the part of supervisors was swift and plainly consistent with the directive, attested to by Respondent's own agents, on the part of plant manager Shelton, that supervisors preclude employee distribution within the confines of the plant. That instruction did not distinguish between working areas and nonworking areas and constituted an unequivocal restraint. In any event, there is no affirmative, probative evidence, that the airlocks in the Carter plant were either working areas, or areas in which distribution could not have taken place without impairment of reasonable ingress and egress by employees and others utilizing the plant entrances. With respect to the Holly plant, the mere fact that the north entrance was adjacent to dock areas which about 3 times a day were utilized by lift trucks also fails to justify Respondent's absolute bar to employee distribution at that location.[15]

Few statutory policies are of longer standing and broader acceptance than the principle that Section 7 of the Act protects the right of employee organizers to distribute literature on their own time in nonworking areas on plant premises. It need not be gainsaid that interference with such activity ". . . must be presumed to be an unreasonable impediment to self organization and therefore discriminatory in the absence of evidence that special circumstances make the rule necessary in order to maintain production or discipline." See *Peyton Packing Co., Inc.*, 49 NLRB 828, 843-844; *Republic Aviation Corp. v. N.L.R.B.*, 324 U.S. 793, 803-804; and *Stoddard-Quirk Manufacturing Co.*, 138 NLRB 615. Respondent's posi-

[15] Supervisor Hanchey conceded that the possible use of the loading dock had nothing to do with his reasons for stopping the employees from distributing union literature at that location.

tion is unaided by any proof suggesting that the various incursions on employee rights which are outlined above were justified by such special circumstances. Indeed, Respondent, in its brief, does not seriously dispute that violations occurred in this regard, but appears to seek comfort through an effort to mitigate the seriousness of these violations, as an isolated reaction on the part of a management surprised at the Union's shift in its pre-established policy of disseminating information outside the plant gates. It is difficult to imagine that local management in Wallace, at the terminal stages of the third union campaign and while living under the sanctions of a contempt order [16] acted spontaneously and without consultation with advisors, thoroughly conversant with the strictures imposed by law, before completing this broad-scaled assault upon employee rights.[17]

In conclusion, I find that Respondent violated Section 8(a)(1) of the Act by precluding employees from distributing union literature on their own time, inside the employee entrance of the Holly, and within the airlocks of the main and north entrances at the Carter plant. I further find that Respondent violated Section 8(a)(1) of the Act in furthering its policy against such employee access, by the conduct of supervisors in physically blocking the main entrance at the Holly plant during the period prior to the start of the second shift on the day of the election, by threatening to call the law if employees did not remove themselves from the plant, by threatening to have employees physically removed, and by instructing employees who were distributing literature to go home, rather than report on their scheduled shift.

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[16] *N.L.R.B. v. J.P. Stevens & Co.*, 464 F.2d 1326 (C.A. 2, 1972).

[17] In *J.P. Stevens & Co., Inc., Gullistan Division*, 179 NLRB 254 (*Stevens VII*), Respondent was specifically ordered to cease and desist from: "Promulgating, maintaining, or enforcing any rule prohibiting employees during their nonworking time from distributing union literature or discussing union activities in nonworking areas on company property."

It is also clear that after employees were either removed or precluded from entering the plant proper, supervisors continued to observe them distributing literature outside the Holly and Carter plant entrances. The continued presence of supervisors on those occasions would have an inhibiting effect upon employees who were the object of such distribution, and there being no legitimate justification for the presence of the supervisors, this surveillance constituted a further violation of Section 8(a)(1) of the Act.

b. *Grant of benefits*

(1) The profit-sharing "floor"

Since 1965 Respondent-Employer maintained a profit-sharing plan covering hourly employees on a companywide basis. It was financed by employer contributions computed on the basis of a formula which imposed no obligation until annual earnings exceeded a percentage of stockholder equity. Thereafter, 10 percent of all, after tax, profits were contributed. Separate accounts were maintained for each employee participant. The principal and earnings were held under a trust arrangement with the Morgan Guarantee Bank, the trustee, which invested the funds in stocks and bonds.

Respondent, at times material herein, operated on a fiscal year basis ending October 30. Employees, however, were not notified as to the status of their individual accounts until the following spring.[18]

During the recession of 1973 to 1974, the stock held in trust for the benefit of the participants sustained a serious decline in value. The plan as originally conceived contained no guarantee against losses, which therefore were to be borne by employees. Consequently, in April 1974, the profit-sharing report distributed to employees reflected a decline in their individual holdings.

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[18] These reports reflected the values held as of the preceding December 31.

Prior to the commencement of the instant organization drive in September 1974, it does not appear that Respondent's highest management was alarmed by the revelation that profit-sharing benefits were subject to dilution through stock market flutuations [sic] and no steps were taken to eliminate this risk. Yet, on January 21, 1975, just 4 weeks prior to the Wallace election, the Company formally notified employees in all of its plants that a guarantee against profit-sharing losses would be implemented. The guarantee was to be financed out of general corporate funds, and assured participants that they would receive at least the full amount of company contributions and forfeitures credited to their account as of December 31, 1974.

The complaint alleges that imposition of this guarantee violated Section 8(a)(1) of the Act. Respondent asserts that this new protective factor against losses in the profit-sharing plan was not influenced by the union campaign at Wallace, but based upon Respondent's need to "keep our head above water" in the competitive textile labor market, a concern reaching all 38,000 of Respondent's employees.

Hastings Foster, a former general counsel of the Respondent, was the principal architect of this revision in the profit-sharing plan and, the key witness affording testimony as to the genesis of this new profit-sharing innovation. Foster testified that when the profit-sharing plan was adopted by Respondent in November 1964, it had been modeled after a plan utilized by Burlington Industries. After participating in drafting the initial plan, Foster served continuously both on the profit-sharing committee, which held operating responsibility for the administration of the plan, as well as the investment committee of the Board of Directors of J.P. Stevens, which oversaw the manner in which funds were invested.

On September 19, 1974, Burlington Industries announced a revision to its profit-sharing plan, also inspired

by the decline in the value of investments during the recent recession. That revision was a two-pronged attack upon share loss depreciation attributable to market fluctuations. Thus, Burlington announced that effective January 1, 1975, the principal of each participant's account would be guaranteed against losses, and in addition appreciation of the principal held would be guaranteed by an interest factor corresponding to that paid on passbook savings accounts.

Foster concedes that prior to the Burlington announcement, officials of the Respondent in the industrial relations area had been after Respondent's headquarters to effect changes in the profit-sharing plan ". . . which at least protected the amount that had been paid in for the respective individual accounts." However, it is the sense of his testimony, that these internal rumblings caused no stir until after Burlington revised its plan.

According to Foster, after reading newspaper releases on the Burlington revision, he contacted Burlington seeking more detailed information concerning the modification. Foster went on to relate that by memo dated October 4, 1974, he reported to J. D. Finley, Chairman of the Board of J. P. Stevens & Company that he would work with actuaries to obtain estimates of what a similar change would cost. Later, Foster was directed by higher management to work with the corporate comptroller to study the cost impact on Stevens of the Burlington revision, and also to make a cost study in connection with a possible substitution of pension plan for the existing profit-sharing plan.

In the meantime, Foster learned that another competitor of Respondent had taken measures to protect employees against impaired benefits in its profit-sharing plan. Thus, on November 21, 1974, Spring Mills announced that it would save whole employees eligible for benefits in 1974 either through retirement, disability, economic ter-

mination, or death, by a payment to offset the decline in value of their individual shares during 1973. The Springs arrangement was a one shot revision, imposing no guaranteed floor on shareholdings in future years, but was adopted solely to offset the impact of 1973 losses, upon those eligible for benefits during 1974.[19]

With respect to the time table on implementation of the J. P. Stevens guarantee, Foster testified that preliminary cost figures were not available until late December 1974. Foster also testified, however, that it was not until January 17, 1975 when the cost background for establishment of a pension plan were available. Thus, Foster claimed that all cost data on all possible alternatives, were unavailable until that date, and that a meeting was conducted on that issue with high level company executives at that time. The three alternatives considered at that time were: (1) The Burlington guarantee which coupled protection against losses with a guaranteed appreciation factor, or (2) A floor against losses, without a continuing guarantee of interest, or (3) A pension plan. At this meeting, the decision was made to adopt a floor against losses, with no interest guarantee. The pension plan concept was rejected as "staggeringly expensive." The guaranteed interest concept was rejected as too inflexible since such a step could be taken in the future, but once done, it could never be rescinded. Foster was then instructed to prepare an announcement of the results of this meeting. In conjunction with J. W. Jelks, the corporate director of industrial relations,[20] a notice to employees was prepared, and posted at each of Respondent's facilities on January 21, 1975. The notice defined the change as affording employees who become eligible for benefits on or after January 1, 1975 "no less than":

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[19] See Respondent Exhibit 27(b).

[20] J.W. Jelks admittedly was involved in the union campaign at Wallace.

> The full amount of all company contributions made to his account from the beginning of the plan in 1965 through 1974.
>
> Also the full amount of all forfeitures credit to his account in those years.

In accordance with settled authority, the announcement of new benefits during an organization campaign is presumptively violative of Section 8(a)(1) as a manifestation of economic strength calculated to influence employees in their choice of a bargaining representative. The legitimacy of such action may only be established upon a showing by the employer that said announcement was justified by considerations other than a pending election.[21]

The effort by the defense to disassociate announcement of this new benefit from the pending campaign in Wallace was thoroughly unpersuasive. The decision to grant the new benefit was made on Friday, January 17, 1975, and was announced to all employees at substantially all plants on Tuesday, January 21. Hastings Foster admittedly was responsible for familiarity with time tables of significant procedures before the National Labor Relations Board in connection with organization efforts at Respondent's plants. The decision and announcement of the profit-sharing guarantee occurred therefore with knowledge that a petition filed on December 17, 1974, was then pending at Wallace, and that a preelection hearing had been held on January 9, 1975 based thereon.[22] Thus, it is readily inferrable that Foster was fully mindful, at the time the decision was made, that an election at Wallace was only a few weeks in the offing. The very nature

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[21] See e.g. *Essex International*, 216 NLRB 575, 576, *Arrow Elastic Corporation*, 230 NLRB No. 23, JD page 5; *Dravo Lime Company*, 234 NLRB No. 35, JD page 44.

[22] Note that the Decision and Direction of Election concerning the Wallace facilities issued on January 20, 1975.

of this benefit discounted any urgency, which required announcement of the new benefit prior to the election. On the contrary, Foster admits that neither the value to the employees nor cost to the Company would be influenced by the date of announcement since the revision was retroactive to January 1, 1975, and no employee would profit therefrom until departing Respondent's employ under the requisite circumstances. The record bears not the slightest suggestion as to why, apart from the pending organization campaign, it was necessary to effect the announcement of the new benefit prior to the election at the Wallace facility. Also unpersuasive is Respondent's claim that this presumptively unlawful conduct be excused by the fact that the announcement was company-wide in scope. The discontent among employees concerning the decline in value of their shares resulted in a fester of Respondent's own making. That condition was condoned for some 5 months prior to any expression of concern on the part of Respondent's ranking executives. Thus, in April 1974 the news as to the shrinking of shares was delivered to employees, and perhaps even before that occasion, industrial relations personnel had raised their concern as to the absence of protective guarantees on the profit-sharing plan. Further, several significant events preceded the Burlington announcement.

On August 28, 1974, the Union was designated through a Board conducted election as the exclusive bargaining representative for Respondent's employees at its Roanoke Rapids, North Carolina, facility. In his testimony here, Foster expressed the belief that the losses in profit-sharing was one of the issues in that campaign. Parenthetically, it is noted that one of the newspaper articles which prompted Foster to initiate exploration of the possibility of protecting profit-sharing accounts, included the following statement:

> One of the reasons given by employees for voting in a union recently at the J. P. Stevens plant in Roanoke

> Rapids was worker dissatisfaction over their diminished retirement benefits.[23]

Spurred by the victory at Roanoke Rapids, the Union commenced organization activity at the Wallace facility in early September 1974. The share loss issue was raised early in the Wallace campaign. A union handbill distributed on October 8, 1974 had the following message:

> As a Stevens working employee, you've probably suffered a big cut in your profit-sharing fund, on which you were counting for your retirement. Did the company give with the one hand . . . then take away with the other? It looks that way.
>
> * * *
>
> Did you know that J. P. Stevens, while cutting and reducing the worker profit-sharing fund . . . was at the very same time raising and improving the pension for salaried employees and bosses? Why did J. P. Stevens take away from you and give to the others?
>
> Are you getting a raw deal? Yes—without a union.[24]

The testimony by Foster that it was the Burlington Mills announcement, rather than union activity, which prompted his efforts along this line was highly dubious. His plea that he took the initiative to maintain Stevens "head above water" in a competitive labor market, while at the same time attempting to create the impression that the threat of organization generally was not a factor was an incredible venture. At the time he considered the Burlington news releases, Foster, it is fair to assume, was aware that union activity in Wallace had commenced. In addition, he admittedly had received information suggesting

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[23] See Respondent Exhibit 25.

[24] See Respondent Exhibit 2(g).

that profit-sharing losses had contributed to the Union's victory at Roanoke Rapids. Against this background, Foster's labored attempt to divorce employee discontent arising from profit-sharing losses from union activity, impressed me as incredible. His vague allusions to the need for J. P. Stevens to remain competitive in the labor market was undefined. Considering the commitment of J. P. Stevens to maintain union free operations, as is evident from the case law nourished thereby, it is far more probable that Stevens functionaries equated an adverse labor market posture with the existence of discontent which could be exploited by a labor organization. Contrary to Foster's testimony, I am convinced that Respondent acted on January 17 to effectively neutralize employee unrest that had been exploited by the Union in past organizational efforts and the existing one in Wallace, and to further enhance its continuing effort to thwart union activity.[25]

The conclusion that Respondent's conduct in this regard is not to be deemed privileged simply because the benefit was conferred on a companywide basis is supported by other grounds as well. This is not a case where the impact of the employer's exercise of economic strength at a single location, immediately subject to organization, is diffused by substantial expenditures or immediate commitment to assume a fixed liability equally beneficial to employees at a number of locations. The logic which might associate innocence with a disproportionately large upgrading of employee benefits generally is simply not

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[25] Certain findings made by Administrative Judge Bernard Ries in the surface bargaining case at Roanoke Rapids, even if not of significance, are nonetheless interesting. See *J.P. Stevens & Co., Inc.*, JD 871-77 (December 21, 1977). At page 30 of that Decision, Judge Ries found that on November 8, 1974, "the Union submitted a contract proposal asking that the amounts credited to employee accounts be guaranteed." The Company made no counterproposal prior to January 21, 1975.

present here. As compared with Burlington Industries [26] the remedy adopted by J. P. Stevens was of the "bargain basement" variety. Thus, the floor on losses announced by J. P. Stevens on January 21, 1975 imposed only conditional liability.[27]

In sum, I find that Respondent failed to disassociate the timing of the decision to implement the profit-sharing floor from the pending organization drive at Wallace. Instead, the entire record warrants the inference affirmatively that Respondent took this step as part of its continuing effort to compete in the textile industry from a stance uncomplicated by union representation of any segment of its

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[26] It will be recalled that Burlington Industries in addition to imposing the floor, committed itself to future payment of the 6 percent interest guarantee. Spring Mills on the other hand, committed itself to the immediate payment offsetting 1973 losses in shares, to those who retired in 1974. The Stevens charge was limited protection of losses to those who became eligible for redemption of benefits after January 1, 1975.

[27] The Stevens floor would only involve expenditures to employees who terminated under conditions specified in the plan at a time when the overall corpus existed at deficit levels. As to those who terminate at a time after such a deficit has been erased by forfeitures or a reversal in stock market performance, this innovation would cost J.P. Stevens not a single penny. From assertions appearing in a sworn affidavit by Hastings Foster [See General Counsel Exhibit 602(b)], it is clear that as matters turned out liability under the floor was limited to 1975 terminations. Thus, according, to figures contained in that affidavit, as of December 31, 1974 the deficiency between the amount in participating accounts and the guaranteed floor was $2,534,800. By the end of 1975 this deficit was supplanted by a surplus of $3,503,588. It is entirely possible that actuaries in arriving at cost data with respect to the floor and Stevens officials were mindful, as of January 17, 1975, of trend factors indicating an immediate reversal of investment performance. The shift of 6 million dollars, which exceeded company contributions during fiscal 1975 by a 3 to 1 ratio, in the corpus of the profit-sharing plan might well have been sufficiently dramatic to be predictable. As matters turned out, the actual liability sustained by the Company under the guarantee totaled $170,000 and was limited to those who retired during the calendar year 1975.

employees, a posture once more under threat in January 1975 by the pending election at the Wallace plants.[28] Accordingly, I find that Respondent by announcing and implementing the new floor on the profit-sharing plan on January 21, 1975, at the Wallace plants, only 4 weeks prior to the election at those facilities violated Section 8(a)(1) of the Act.

(2) The unemployment compensation supplement

The allegation that Respondent violated Section 8(a)(1) in this respect stems from circumstances related to a change in the North Carolina State Unemployment Law, whereby, effective October 1, 1974, unemployment benefits were increased from $68 to $90 weekly. Because of a possibly innocent misinterpretation of this statutory revision, a number of employees laid off at Wallace on September 30, 1974 were prejudicially frozen for an entire benefit year at the $68 dollar weekly benefit level. On February 11, 1975, only 8 days before the scheduled election at the Wallace facilities, Respondent announced that employees at all North Carolina plants who were prejudiced by the allegedly erroneous interpretation of the

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[28] Respondent makes much of the fact that on or about January 28, 1975, the Union distributed a handbill at Wallace describing the new floor as the product of collective-bargaining at Respondent's Roanoke Rapids plant and claiming credit for that change in the profit-sharing mechanism. Robbed of this rallying point, by the Employer's conduct only 4 weeks before the election, the Union clearly sought to utilize propaganda to preserve its position in the light of the Employer's action. The leaflet was misleading, and, perhaps ought not be condoned, but nonetheless that action did not diminish the import of this grant of benefits upon the election to be held at that location. Indeed, in a prepared speech, given to Wallace employees on January 28, 1975, plant manager Gordon Walker in an antiunion address, refuted the import of that leaflet, by stressing that the source of the profit-sharing floor was exclusively attributable to the beneficence of J.P. Stevens and was a matter that the Union had nothing to do with. See General Counsel Exhibit 602(d).

new law would be paid the difference between the $68 weekly benefit and the new $90 weekly benefit.

Respondent's evidence as to the origin of this problem reflects that in September 1974 business conditions at the Carter plant called for a temporary layoff. Odis Little, division industrial relations manager, testified that in September he received an inquiry from plant manager Walker concerning the intended layoff, and asserts that Walker expressed the desire to assure that employees affected thereby would benefit under the change in unemployment law. Little testified that he ". . . told him that the change was effective October 1, and that if he waited until that week to curtail, that the people would be covered under the benefits." Walker also instructed Jack Cottle, the personnel manager of the Walker plants, to contact Elizabeth Grant of the State Employment Security Commission to discuss the unemployment situation with her.[29] Grant purportedly informed Cottle that under the new unemployment law the maximum benefit an employee could receive was being raised from $68 per week to $90 per week, effective the first week in October. Subsequently, on or about September 23, 1974 Cottle again telephoned Grant and asked if layoffs scheduled for the week ending October 6, 1974 would qualify employees for the higher benefits. Grant answered in the affirmative. There apparently was no specific mention of the fact that the actual layoff date was September 30, the day before the effective date of the revision in the employment benefits.

As I understand Grant's somewhat confusing testimony, weekly benefits for eligible employees are at the level in effect at the commencement of their benefit year. The benefit year commences on the first day of the payroll period in

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[29] Elizabeth Grant at the time of the events herein in question was manager of the Employment Security Commission for Duplin County. Mrs. Grant was based in Kenansville, North Carolina and J.P. Stevens at Wallace constituted the largest single employer in her jurisdiction.

which the layoff occurred, irrespective of when the unemployment claim is filed. Since September 30 was the first day of the payroll period in which the Carter plant layoff occurred, those included in that layoff were only eligible for the $68 weekly benefit for the next 12 months. This fact was not discovered until October 9, 1974.

Efforts to relieve the impact of this error upon the laid off employees commenced immediately. These efforts proved fruitless. After local management exhausted all apparent avenues for obtaining relief, Odis Little, at the division level, informed local plant management ". . . that there was really nothing more that we could do at that time." Little then prepared a formal explanation to be read to affected employees.[30] On or about November 8, 1974, that document was read by supervisors to groups limited to the employees affected. Significantly, and somewhat puzzling is the fact that said statement does not attribute the error to faulty information received from Grant or any other state official. Instead, insofar as material, the explanation afforded the employees was as follows:

> We did not know, and the employment security people did not advise us that the new coverage would not be effective when we stood the knitting department the week beginning Monday, September 2, 1974. We thought that, since, October 1 fell during that week that the knitting department would be covered under the new law. It was only after we had stood that week and you people had been signed up that we found out the facts about this point.
>
> * * *
>
> Telling you this won't get you anymore (sic) unemployment compensation and probably won't make you

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[30] See General Counsel Exhibit 601(a).

feel any better, but we felt we owed you an explanation about how this situation came about.[31]

Though the gist of the Respondent's expressed position was that no relief would be accorded the laid off employees, its posture in this regard subsequently became more flexible. Although the Respondent claims that at the time that the above statement was read to the employees, no further layoff was anticipated, it appears that commencing November 25, only 2 full working weeks later, the entire Wallace operation was shut down. In consequence of the earlier mistake, during this shutdown, 134 employees were frozen at the $68 benefit level while the balance of the work force, having been laid off for the first time in November, received the new maximum of $90 per week. This disparity understandably led to discontent. Little, having received reports from plant management at Wallace to this effect, contacted J. M. Jelks, the director of industrial relations at the corporate level in late December 1974. In the course of their conversation, Little ". . . outlined the whole scope of the problem as it existed up to that point, explaining that he had exhausted his resources, that local management felt that remedial action should be taken," and solicited Jelks' help.[32]

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[31] Although accepted, for purposes of argument, it should not go unnoticed that the undersigned viewed with considerable suspicion the effort to impose responsibility upon State officials for the compensation error. Grant seemed too willing in her confession of fault, and Cottle too protective of the Company's own negligence in the handling of this matter of importance to employees. Curiosity is also aroused by the drift of the statement prepared by Little to be read to the employees affected. It is difficult to imagine that Little, in drafting that document, was unaware that local management had acted upon confirmation and with guidance from Grant. If that, in reality, had been the case, would it not have been passed onto employees on November 8, during the course of the organization drive. Despite concern for the truth of this entire foreground for the defense, firm resolution of that question is unnecessary to the analysis.

[32] According to the testimony of Little, prior to contacting Jelks, he contacted Tom Ingraham, vice-president of the North Carolina

Thereafter, Jelks arranged a meeting with the Director of the North Carolina Employment Security Commission, which was held on January 24, 1975. At that time, Jelks assertedly expressed the view that it was the Employment Security Commission that was responsible for the misinformation upon which the Company had relied and that therefore the former should correct the error. According to Little, representatives of the Employment Security Commission were sympathetic to Respondent's problem, but indicated there was nothing that they could do to resolve it.[33] With this, Little suggested to Jelks that the Company reimburse the affected employees. Jelks replied that more information was necessary to evaluate the suggestion, and later directed that a cost statement be prepared by Stevens' accounting staff. At the time of this meeting, Jelks had gathered information projecting the number of employees who *might* have been affected adversely by the change in benefits error. These projected figures showed the following:

Textile Manufacturers Association. Ingraham, according to Little, stated that the problem affecting the Carter plant was statewide, and that other employers were involved in a similar mixup. Ingraham did not appear. In view of an objection interposed by the Charging Party, the undersigned informed counsel for the Respondent that he would not make findings based on uncorroborated hearsay, and specifically urged Respondent to call primary witnesses if he expected findings on the secondary evidence adduced through Little. Though this ruling was made at the hearing session of June 21, 1977, and the hearing was closed on August 3, 1977, Respondent made no effort, or requested no leave, to call any such witnesses. Little's uncorroborated hearsay testimony in this respect is nonprobative and affords no substantial basis for a finding.

[33] Pursuant to a highly leading question, propounded by Respondent's counsel, Jelks indicated that the Commission's director acknowledged that the Commission had made an error. I did not believe this aspect of Jelks' testimony, and in any event it stands as incompetent hearsay.

Ragan Plant	—	171 employees
Aberdeen Plant	—	1 employee
Longview Plant	—	9 employees
Carter-Wallace	—	158 employees
Boger City	—	5 employees
Roanoke Fabricating Plant	—	2 employees
Rosemary Plant	—	7 employees
Richmond Fabricating Plant	—	1 employee
Martha Bynum Plant	—	2 employees
Bob Stevens	—	1 employee

On January 27, the comptroller of the Company's synthetic division submitted a memorandum to Jelks outlining the procedures which would be used in making the cost estimate. On or about February 9, 1975, Jelks received information that it would cost approximately $5243 to reimburse or compensate every affected employee in North Carolina plants whose unemployment benefit was at the $68 level due to the erroneous interpretation under the law. Upon receipt of this information, Jelks alone decided to pay the employees the differential. On February 11, an announcement was made to each of the employees affected of the Company's decision.

Here again, a new benefit innovation was conceived and announced shortly prior to the election at Wallace. Jelks was no stranger to the campaign at Wallace. Little admitted that both he and Jelks were involved in the preparation of speeches delivered to employees by the plant manager during the Wallace campaign. Jelks admitted working with Little on that campaign. Jelks testified that he considered whether announcement of the new benefit should be deferred, but felt that, to do so, would be unfair to other North Carolina employees. This assertion smacked at pretext, and represented a segment of a deliberate, overall attempt to distort the true motivation for his action.

Interestingly enough, Respondent's own evidence hardly suggests that employee unrest at other North Carolina

facilities remotely approached that existing among the employees at the Carter plant. The testimony of Little and Jelks clearly implies that the unrest among employees was most intense at the Wallace plants. There is no evidence that the notice read to affected employees at the Carter plant on November 8, was ever communicated to employees at any other North Carolina locations. Further testimony adduced from Jelks persuades that he was aroused to remedy the problem solely on the basis of reports of discontent from Wallace. Thus, he testified that prior to his discussion with Little in late December 1974, he felt that the unemployment compensation problem had been laid to rest by the November 8 notification to employees at Wallace that nothing further could be done. Later, the problem reemerged with the November shutdown at Wallace, not shown to have been experienced elsewhere. Jelks became involved again in consequence of Little's appeal in late December, which according to the testimony of Little was prompted by the second layoff at Wallace.

The concern expressed by Jelks for fair treatment of employees at all plants was self-serving and far disproportionate to the events pending at Wallace. That Wallace was the focal point of the problem was evident to Jelks from information he possessed when he made the decision to provide the supplementary benefit. At that time Jelks knew that only at Wallace was the problem a significant and potentially lingering one. Thus, as matters turned out only five of Respondent's North Carolina facilities were affected by the problem. Of these, three, the Rockingham, Roanoke Rapids and Boger City plants, had a combined total of only 4 adversely affected employees. Apart from Wallace-Carter, the balance of the employees to receive the supplementary payment, numbering 113, were employed at the Ragan plant. At Carter, 151 qualified for the new benefit. Jelks made his decision with these figures at hand. Thus, apart from some 151 employees scheduled to participate in a Board conducted

election a few days later, the only substantial complement to be affected by the announcement were those at the Ragan plant. Yet, a document, apparently prepared at the request of Jelks on January 23, 1975, and forwarded to Jelks, nullifies the suggestion that the unemployment differential presented a problem at Ragan, by stating as follows:

> Less than one-half dozen employees questioned the differences in benefits. No employee problems resulted.

Nonetheless, counsel for the Respondent produced the following response from Jelks on examining him as to whether the upcoming election at Wallace was the consideration in making the decision to grant the supplemental benefit:

> Certainly everything we did at Wallace at that time was a consideration. It certainly was not the major consideration. Our consideration, our major consideration, and the basis on which we made this decision was because it was the "fairest" thing to do, the "right thing" to do, and we felt that the sooner we do it the fairer it would be for all those people who were affected.

Contrary to the effort by Jelks to diminish the relationship between his decision to grant this benefit and the campaign at Wallace, the circumstances surrounding the announcement of this *shift* in company policy reduces the defense to a transparent deception. Apart from the election scheduled at Wallace for February 19, announcement of the new benefit prior thereto served no interest other than the Company's concern for the discord that the unemployment issue had created among employees at that location.[34] The announcement was made in haste only one

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[34] Jelks, not without exaggeration, testified that because of the unemployment benefit problem, ". . . it was said that we had dissatisfaction at Wallace and Ragan and Roanoke Rapids, Volger City and Rockingham, and that we had better face up to this problem everywhere, Wallace included."

week before that election, and at a time when final computations had not been completed as to the specific amounts individuals would receive.[35]

From the foregoing, I find that Jelks entered the efforts to resolve the unemployment benefit problem because of the unrest among the Carter plant employees and that he made the decision to remedy these complaints with knowledge that this was the sole facility where discontent presented a serious immediate threat to management's interest. I find that the remedy was conceived and precipitately announced, to influence the vote of employees at the Carter plant, and further, that the extension of the scope of the new benefit to other plants unaffected by union activity, was a deliberate design to mask an outright interference with employee choice. Accordingly, I find that Respondent violated Section 8(a)(1) of the Act by announcing and deciding to grant a supplemental unemployment payment to discourage employees from supporting the Union.

d. *Miscellaneous Acts of Coercion*

In addition to the foregoing, the complaint alleges independent 8(a)(1) violations based upon three separate encounters between individual employees and supervisors.

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[35] General Counsel Exhibit 601(b) is the announcement read to affected employees on February 11, 1975. Jelks participated in the preparation of that document. The last paragraph thereof states as follows:

> All of the applicable figures not in our own records will be obtained from the commission. As soon as the necessary computations can be made for you and for all Stevens employees adversely affected by having "signed up" as of the week of September 29, 1974, such computations will be gone over with each individual affected and payments will be made to each.

In any event, neither the nature of the benefit nor the degree of the company's liability would have been influenced one iota had the Company deferred its announcement until after the election, when all computations as to the amounts payable would have been ascertained.

The first of these allegations relates to an alleged threat of discharge communicated by Robert Cranford, the finishing department superintendent at the time, to employee Ernest Carroll. It is the General Counsel's claim that shortly before the election, in February 1975, Cranford aired his animus toward the union activity of another employee, Robert Glasper, to Carroll, in a conversation which included a threatening remark prompted by Glasper's union activity. The General Counsel offered in evidence that sworn, pretrial affidavit given by Carroll on April 17, 1975, only about 2 months after the incident in question.[36] Carroll's testimonial account of the incident is not absolutely symmetrical with the version appearing in his prehearing affidavit, but not so inconsistent as to require rejection of his testimony. As I interpret his sworn accounts,[37] Cranford, shortly before the election, stopped Carroll as he passed the former's office enroute to a speech to be delivered by a union representative under the terms of a civil contempt order.[38] Cranford at that time indicated that there was not "a damn thing to the Union" and that Carroll should tell the men that. With reference to Glasper's union activity (possibly his participation in handbilling or his wearing a union button), Cranford indicated that he should have fired Glasper a long time ago, but instead saved his job. Cranford told Carroll to communicate his comments to Glasper. Carroll's affidavit and testimony indicate that he did so.

Cranford denied that he ever had a conversation with Carroll. He attempted to draw attention to the improbability of Carroll's account by describing Carroll as a per-

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[36] See General Counsel Exhibit 600.

[37] Carroll affirmed the truth of the content of his affidavit while testifying in this proceeding.

[38] As shall be seen *infra*, the election campaign in issue here was the subject of a contempt order, which, *inter alia*, included certain provisions requiring Respondent to provide access to the Union for delivery of speeches to employees on work time.

son difficult to communicate with. I have heretofore indicated that I did not regard Cranford as a reliable witness. Although Carroll was under perceptible strain in attempting to recall the specifics of this conversation, occurring more than 2 years before, his affidavit executed in April 1975, at a time when Carroll was an incumbent employee with at least 8 years service, enhances persuasively that his account had substance. I credit Carroll, and find that in the conversation to which he attests, Respondent violated Section 8(a)(1) by Cranford's expression that, in view of employee Glasper's present union activity, he should have been fired when Cranford had the opportunity at an earlier date.

The complaint also includes an independent 8(a)(1) allegation based on the testimony of employee James Newkirk that about 2 weeks prior to the election, while he was reading union literature in the break area, on nonworking time, supervisor William Batts approached him and directed him not to read union literature in the plant. Batts denied that this incident occurred, adding that he neither instructed Newkirk not to read union literature, nor even observed him doing so in the break area. There were no witnesses to this conversation. Absent corroboration, the testimony by Newkirk is regarded as an unreliable predicate for an unfair labor practice finding. Newkirk was an unimpressive witness, who struck me as argumentative and biased. Accordingly, I shall dismiss the allegation based upon his testimony.

Finally, the original complaint alleges that Respondent violated Section 8(a)(1) of the Act through an allegedly coercive statement attributed to supervisor Vaden Scholar by employee Bernice Jenkins. According to Jenkins, Scholar approached him and expressed his understanding that a union meeting the previous evening did not go well. Jenkins asked Scholar how he knew that Jenkins had attended the meeting. Scholar indicated that he knew everybody who had attended, and expressed his under-

standing that certain employees did not like what they heard and therefore walked out. When Jenkins asked how Scholar had received such information, Scholar made no comment and simply walked off.[39]

Scholar denied having any conversation with Jenkins concerning a meeting at the National Guard Armory. Scholar admitted that he knew of union meetings at the armory and that he had received reports from others concerning Jenkins' union activity. At one point in his testimony, Scholar seemed to admit that he did discuss what transpired at union meetings with other employees, but seemingly aware of the import of such a slip, he subsequently appeared more cautious and inclined to hedge his testimony in this respect. Scholar was not impressive and the testimony of incumbent employee Jenkins is preferred. Section 7 of the Act protects employees in their right to engage in union activity free of harrassing expressions by supervision to the effect that the "eyes and ears" of management are monitoring such conduct. Considering the Stevens' history of hostility toward union activity, Scholar's revelation of knowledge as to what went on at the union meeting was coercive and violated Section 8(a) (1) of the Act.

e. *Other unfair labor practice issues*

The foregoing constitutes the entirety of the independent 8(a) (1) allegations alleged in the original complaint. Several additional issues remain, but they shall be treated in other sections of this decision.

Thus, the complaint alleges that Respondent violated Section 8(a) (5) and (1) of the Act by unilateral promulgation of an unlawfully broad no-distribution rule on various dates prior to February 19, 1975. The complaint

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[39] Jenkins could not recall the date of this conversation and indicated it could have been any time between October 1974 and the election of February 19, 1975.

also alleges that Respondent violated Section 8(a)(5) and (1) of the Act in April 1976 unilaterally converting its profit-sharing plan, to a pension plan, without notifying or consulting with the Union. These allegations are controlled by the question of whether Respondent was obligated to bargain with the Union at the time unilateral action was taken, in accordance with *Trading Port, supra*, and *N.L.R.B. v. Gissel Manufacturing Co., Inc.* The issues presented thereby accordingly will be discussed in a portion of this decision dealing with the alleged refusal to bargain.

In addition to the foregoing, the General Counsel, after close of the hearing, sought to amend the complaint to reflect additional 8(a)(1) violations based upon meetings conducted by plant managers in April and May 1977, which pertained to this proceeding. Since the issues raised thereby bear some relationship to the question of whether the Union achieved majority support during the 1974-1975 campaign, they shall also be resolved below.

2. The alleged 8(a)(5) violation

a. *Preliminary statement*

Unquestionably the issue of fundamental concern in this proceeding derives from the claim by the General Counsel and the Charging Party that the Union, as of February 19, 1975, had been designated by a majority of the employees in the appropriate unit, and that Respondent accordingly violated Section 8(a)(5) and (1) of the Act by refusing to bargain with the Union. It is claimed that Respondent engaged in unfair labor practices sufficiently serious and substantial to warrant the imposition of a bargaining order in accordance with the Board's authority to find 8(a)(5) violations where an established majority has been destroyed through unlawful employer conduct seriously impeding the prospect that a fair election could be held. Thus, in *N.L.R.B. v. Gissel Packing Company*, 395 U.S. 575 (1969), the Supreme Court au-

thorized the Board to issue a bargaining order in certain factual contexts, including those meeting the test set forth below:

> In fashioning a remedy in the exercise of its discretion, the Board can properly take into consideration the extensiveness of an employer's unfair labor practices in terms of their past effect on election conditions and the likelihood of their recurrence in the future. If the Board finds that the possibility of erasing the effects of past practices and of ensuring a fair election (or a fair rerun) by the use of traditional remedies, though present, is slight and that employee sentiment once expressed through cards would, on balance, be better protected by a bargaining order, then such an order should issue.[40]

b. *The appropriate unit*

The complaint alleges that "All production and maintenance employees employed at the Employer's Carter plant, Holly plant and warehouses at Wallace, North Carolina, including plant clerical employees, watchmen, computer programmer in the dye house, electrical technician, and plant driver; excluding office clerical employees, professional employees, cloth store clerk, managerial employees, guards and supervisors as defined in the Act" constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

Respondent denies this allegation, but no supporting proof was submitted. The above-described unit is deemed appropriate. It conforms with that deemed appropriate in the Decision and Direction of Election issued by the Regional Director for Region 11 on January 20, 1975, and it does not appear that the Employer sought review of that determination. Accordingly, under established Board

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[40] 395 U.S. at pages 614-615.

policy, the Regional Director's original unit determination is controlling in this proceeding. See Section 102.67(f) of the Board's Rules and Regulations. See also e.g., *Pittsburg Plate Glass Company v. N.L.R.B.*, 313 U.S. 146, 162 (1941). Accordingly, I find that the unit set forth above constitutes the appropriate collective-bargaining unit in this case.[41]

c. *The request for recognition*

Respondent denies that, in the circumstances, a valid demand, sufficient to give rise to an obligation to bargain, was ever made. Nonetheless, Respondent appears to concede that on December 16, 1974, an attempt was made by union representative Phillip Pope to deliver a demand letter,[42] which was presented to Jack Cottle, Respondent's personnel Director at Wallace. Pope credibly, and without contradiction, testified that he informed Cottle that he had a letter stating that the Union represented a majority of the employees and was ready to sit down and start bargaining. Cottle replied "We're not ready for you boys yet, just let the Labor Board handle this thing." Pope then left the plant and forwarded the letter to Respondent by registered mail.

In addition to this legally effective demand, the stenographic transcript of the preelection hearing on January 9, 1975, in Case No. 11-RC-3987 attests to a second demand by union representative Harold McIver. The transcript reveals that, after Respondent's counsel stipulated that a demand had been made on December 16, 1974, McIver went on to indicate: "I would like to state that we have a continuing demand for recognition."

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[41] The Respondent's stipulation with respect to a payroll listing of employees suggests that its objection to the scope of the appropriate unit is not seriously maintained. See General Counsel's Exhibit 628.

[42] The letter was addressed to General Manager Walker. He apparently was not available when Pope attempted to serve the letter.

Notwithstanding the foregoing, Respondent disputes the existence of a valid demand on grounds that the Union had not achieved majority status until after January 9, 1975. It is true that the record in this proceeding does not reflect that the Union had obtained majority status at that time. On the contrary, the critical date for assessment of the Union's majority was February 19, 1975. As a matter of Board policy, the Union's failure to make a further demand on that date would be excused by the continuing nature of its earlier demands.[43] Respondent nonetheless relies on rejection of the Board's "continuing demand" doctrine in *Hedstrom Co. v. N.L.R.B.*, 558 F. 2d 1137, 1148 (C.A. 3, 1977) wherein the Court stated:

> We cannot accept any concept of continuing demand which requires an employer either to recognize a majority status union, or to risk a Section 8(a)(5) violation in the event that the minority union attains majority status sometime after the demand, unless it gives renewed notices to the employer that it has obtained majority status since the last demand. If an employer were to recognize and bargain with a union which does not represent a majority of the employees in the appropriate unit, it commits an unfair labor practice in violation of Section 8(a)(2) which prohibits an employer from aiding any minority union. (Citation omitted.) If at the time an initial demand is made the Union lacks majority status, the Union must notify the employer when in fact it has obtained a card majority from the employees in order to effectuate a valid demand for recognition.

There is disputed testimony in this proceeding suggesting that at a preelection conference on February 19, 1975, statements were made satisfying the expression by the Third Circuit Court of Appeals. However, that evidence does not rise to a level of sufficient clarity to warrant

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[43] See *e.g. Area Disposal, Inc.*, 200 NLRB 350, 352.

credence and while words might have been expressed approaching a new demand, I do not believe that they amounted to an unambiguous, seriously conveyed request for immediate bargaining.

In any event, it does not appear that the Board has acquiesced in the view expressed by the Circuit Court in *Hedstrom, supra.* But, furthermore, it is entirely possible that the Court's view would be withheld on the instant premises. Thus, the instant organization drive was conducted in a unit consisting of about 1,000 employees, and it is difficult to imagine that the Union, with respect to such a large working complement, could at any time ascertain with *certainty* whether it held validly executed authorization cards from a majority of the work force.[44] Prior to February 19, the Union manifested demands through three separate efforts; Pope's initial rebuff by personnel manager Jack Cottle on December 18, was followed by the mailing of a registered letter. After Stevens, by letter of December 27, 1974, rejected the formal demand, on January 9, 1975, the issue was raised again, whereupon Stevens, through its counsel, at the representation hearing, rejected McIver's renewal of the request. On the heals [sic] of these refusals, Respondent engaged in the most serious unfair labor practices litigated in this proceeding. These factors adequately demonstrate the futility of a further demand. Together with Stevens' history of unfair labor practices and commitment to the maintenance of union free operations, the post demand unfair labor practices obviate all possibility that recognition would have been conferred by Respondent on anything short of a Board order or certification. In such circumstances, to impell [sic] the Charging Party to, for the fourth time, affirmatively demand bargaining, is to im-

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[44] The same could be said for the Employer, who, in deference to the Court in *Hedstrom, supra,* would not be relieved of the perils of an 8(a)(2) violation simply by a succession of renewed demands for recognition.

pose a meaningless requirement, hardly justified by any necessity to insulate Stevens from the pitfalls of a Section 8(a)(2). See *Local No. 152, Teamsters (American Compress Steel Corporation) v. N.L.R.B.*, 343 F. 2d, 307, 310-311 (C.A.D.C., 1965).

Contrary to the Respondent, the demands made by the Union on December 16, and the renewal thereof, together with the express declaration that the demand was of a continuing nature, on January 9, 1975, were sufficient to support the alleged 8(a)(5) violation in this case.[45]

d. *The union's representative status*

(1) Preliminary Statement: Respondent's 1977 conduct

The controversy over the Union's majority was the most extensively litigated question in this proceeding. Hundreds of witnesses testified as to the validity of union designations executed some 2½ years early. The sharpness with which counsel on all sides joined issue on the probative value of substantially all cards, necessited perhaps more than a thousand evidentiary rulings. By my count, the General Counsel offered 583 cards, with all but a handful, received in evidence.[46]

This issue has been resolved in the light of the universally accepted fact that cards are not the most reliable

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[45] The date February 19, 1975 was arrived at in advance as a convenient reference point for assessing the Union's majority. This was necessary so that a list could be prepared in the course of the hearing and before all cards were litigated which would reflect the actual number of employees on the payroll and in the unit on a particular date. February 19 was selected as the outside date for assessing a majority in this proceeding pursuant to that effort. It is entirely possible that the Union, in fact, represented a majority in advance of that date.

[46] My count is substantially at odds with the statement appearing in the Respondent's brief that "544 union authorization cards were submitted by the General Counsel at the hearing." See Respondent's Brief II, page 6.

indicia of employee choice, and that a secret ballot election is the preferred means for resolving questions concerning representation. Indeed, the process of establishing a bargaining relationship on the basis of authorization cards has received sharp criticism in certain quarters.[47] Nevertheless, ". . . where an employer engages in conduct disruptive of the election process, the cards may be the most effective—perhaps the only—way of assuring employee choice."[48] Thus, regardless of how unwelcome, the assessment of an alleged card majority, in such circumstances, is the only effective means for treating with employers who, through their unfair labor practices, would marshal the Board's election process to their own ends.

The possibility that, by lending primacy to authorization cards chicanery on the part of union organizers might be endorsed, compels the trier of fact to be alerted to untoward practices and to act upon a sense of concern and respect for employee choice so as to discourage and discount any highhandedness in the solicitation of cards. At the same time, however, one must be equally mindful of possible improprieties on the part of those who challenge a union's representative status. Thus, as the Supreme Court has recognized:

> We also accept the observation that employees are more likely than not, many months after a card drive and in response to questions by company counsel, to give testimony damaging to the Union, particularly where company officials have previously threatened reprisals for union activity in violation of Section 8(a)(1).[49]

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[47] See the opinion of Judge Medina, speaking for the Second Circuit Court of Appeals in *Bryant Chucking Grounds v. N.L.R.B.*, 389 F.2d 565 (C.A. 2, 1969).

[48] *N.L.R.B. v. Gissel Packing Co., supra*, page 602.

[49] *N.L.R.B. v. Gissel Packing Company, supra*, page 608.

Indeed, pressures on employee witnesses may be subject to reinforcement beyond the inherently intimidating effects of past unfair labor practices and their economic dependence upon continued employment. The record in this case bears evidence that this possibility did not escape Respondent.

Stevens, immediately prior to the instant hearing, resorted to somewhat extraordinary measures which carried all the earmarks of a deliberate design to capitalize upon a combination of fear and dimmed memories in the interest of influencing testimony to be afforded in this proceeding.

Thus, on April 13 and 14, 1977, only 1-month prior to the opening of this hearing, plant managers Shelton and Wellons read a prepared speech [50] to small groups of employees,[51] numbering approximately 15 employees at the Carter and Holly plants. The plant managers opened each meeting with the following statement:

> The purpose of this meeting is to have an open and frank discussion about the union and its efforts to get you to sign authorization cards and to work for the union. At the beginning of this meeting let me make it very clear that each of you should feel completely free to ask any questions you may have or to make any comments you desire. This is an open meeting and I hope you will make any comments you think appropriate.
>
> Many of you have asked questions about the union and its continuing efforts to get into our plant. Today I'd like for us to discuss what a union really is, and *how* they operate. Secondly, I'd like to discuss with you what the union's after by trying to get you to sign their authorization cards, and also in the upcoming legal proceeding.

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[50] The speech is in evidence as GC 626.

[51] See Respondent's Brief II, page 51.

The speech at this point departs from any objective effort to educate, and assumes a low keyed tone, calculated to persuade by dwelling upon the pitfalls of union membership through hardhitting, often misleading,[52] harsh expressions of the ill consequences to befall employees through unionization. On the heels of this deceptive diatribe, the speech goes on to discuss this proceeding as follows:

> In the upcoming legal proceeding, those employees who signed cards prior to the last election will be called into court to testify about their signature. Unless an employee can prove that he/she was misled or deceived into signing a card, or fraud was involved, or the card was not signed by the employee, the Labor Board will count the card for the Union.
>
> If the union can get a majority of cards from employees working in 1974 counted by the Labor Board, then they will try to prove that the only reason they lost the election was because of three things we did.
>
> * * *
>
> The union has lost 11 of the 12 secret ballot elections where employees have voted on unionization. Therefore, the union has decided that the way for them to try to get into our plant is *not* through elections, but through cards and these legal proceedings. That's why they are trying so hard to get you to sign one of these *cards* declaring them your collective bargaining representative. If they can get a majority of our

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[52] This phase of the speech was likely to imbue employees with baseless notions that union representation would *automatically* expose them to the payment of dues, checkoff and fines, implications, which run head long into the North Carolina right-to-work statute (General Statutes of North Carolina, Chapter 95, Article 10, Section 95-82), which outlaws compulsory membership and compulsory payment of dues or fees under a union or agency shop provision, as well as Section 302(c) of the National Labor Relations Act, which requires voluntary employee authorizations before dues may be deducted from wage payments.

employees to sign these cards, they will again start looking for legal technicalities to try to get into our plant. They don't want a secret ballot election again here at Wallace. I think they know they would lose this election, just like they lost in 1975.

Apparently the union believes they may fail in their legal case to try to overturn your vote and to get into or [sic] plant on these charges, so now they are again working to get cards signed.

A secret free vote is not what the union organizers want. They don't want you to have the facts or a vote. They would prefer for you to be exposed only to their pressure tactics and promises, and would try to get into this plant based on these authorization cards.

* * *

Upon conclusion of the speech, employees were invited, during "round table" discussions—in the presence of no less than their plant manager—to express their views concerning any issue, including the hearing to be held in this proceeding. In the courses of those sessions, notes were taken of statements made by employees, but no record was made of responses or expressions by management.

That any party-litigant would overtly resort to propaganda and group pressures to influence potential witnesses is somewhat astonishing. But, in the case of J. P. Stevens, such a ploy is simply indicative of unbridled arrogance. One would think that Stevens—with all that has been said in the course of its ongoing struggle with this Union would conscientiously avoid any appearance of tampering with witnesses. For aside from having earned the reputation as the chief offender of Federal labor laws, Stevens has drawn fire in that area as well. In *N.L.R.B. v. J. P. Stevens & Co.*, 464 F. 2d 1326 (C.A., 1972), the Court condemned Stevens not only for its disrespect for law, but went on to state as follows:

> . . . while conflicting testimony about a specific event may sometimes have been attributable to difference in perception or recollection, we cannot escape the impression that many conscious and deliberate falsehoods were given by company witnesses. We cannot express too sharply our condemnation and dismay for this apparent disregard of the legal and moral obligations which the testimonial oath imports.[53]

With apparent disregard for the gravity of this charge, and in the face of it, the conduct by the plant managers in April 1977 amounted to no less than a deliberate effort to persuade employees to testify in a Board proceeding in a manner furthering Respondent's interest in defeating unionization of the Wallace facilities, and reflected a brash willingness to risk responsibility for testimony which disregarded the sanctity of the oath. The round table discussions, following a hardhitting assault upon the Union, hardly created an atmosphere likely to promote objective comment. There can be little doubt that this was a device of manipulation utilized to play on group pressures, and to provide a one-sided forum for antiunion employees, in the presence of high ranking supervisors, who were making a record of what employees said.[54]

The General Counsel and the Charging Party urge that the testimony of incumbent employees, seeking to repudiate their cards, be discredited since tainted by their attendance at these meetings. Having already reviewed the record, and completed my findings with respect to the authorization cards, I am convinced that this hearing was not always viewed by employee witnesses as a tribunal where issues of representation would be resolved on the

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[53] 464 F.2d at page 1329.

[54] Evidence of the April 1977 events was deemed admissible, over Respondent's objection, on the basis of its relevance to issues of credibility.

basis of truthful expressions of fact, within recall. Common patterns of obviously contrived testimony were adduced primarily from incumbent employees who sought to repudiate their signatures to authorization cards. Most, if not all, employees who afforded such testimony have been discredited. But those determinations have been based essentially on matters collateral to their attendance at the April 1977 meetings, and while suspicion exists as to the origin of such widespread incredulity, the April 1977 meetings have not been relied upon as a basis for impeaching such employees as a class.

Before turning to assessment of the individual authorization cards, it is necessary to pass on a *posthearing* motion by the General Counsel to amend the complaint to allege additional 8(a)(1) violations based upon specified aspects of Respondent's conduct in 1977. Respondent opposed that motion on grounds that it was afforded no opportunity to present a defense as to these matters in view of the absence of notice and the belated nature of the motion, and, on the further ground, that the evidence relied on by the General Counsel failed to establish *prima facie* violations.

The first of these new allegations does not relate to the card issue, but relates to the claim that Respondent violated Section 8(a)(1) by encouraging employees to inform on the union activity of other employees. The conduct involved here is substantiated by admitted evidence on this record. In this regard, the prepared speech delivered in April 1977 by the plant managers was not limited to this proceeding, but also sought to counter the Union's renewed organizational effort which began in January 1977. The following was included in that speech:

> There have been some reports of union pushers threatening people to try to get them to sign union cards. I want one thing made clear. If anyone threatens you or tries to put you under any sort of pressure to sign a union card, let the company know.

> We will put a stop to this. We will not put up with that kind of treatment of our employees.

This expression is not materially different from those condemned by the Board in other cases, in which employers have been held to have violated Section 8(a)(1) by statements urging employees to report incidents of badgering by employee organizers,[55] or to report where exposed to "pestering or pressured to join" a union.[56] Here, as in the cited cases, the segment of the speech encouraging employees to report on "union pushers" when "put . . . under any sort of pressure to sign a union card . . ." involves a standard so vague as to subject employee organizers to the perhaps, mercilous imagination of fellow employees seeking any excuse to inform. The reference in the speech possessed all the restraining effects deemed unlawful by the Board in the past, and, accordingly, as the portion of the speech in issue constituted a fully litigated *per se* violation of the Act, the request to amend the complaint in this respect is granted, and I find that Respondent thereby violated Section 8(a)(1) of the Act.[57]

Of somewhat closer relevance to the majority issue is the requested amendment to paragraph 7 of the complaint, whereby the General Counsel challenges the speech, the round table discussions, and a notice posted by the Respondent on April 26,[58] on grounds that Respondent

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[55] *Poloron Products of Mississippi, Inc.*, 217 NLRB 704, 707.

[56] See *Lutheran Hospital of Milwaukee*, 224 NLRB 176, 178.

[57] This violation ought not be unfamiliar to Respondent's officials. See *J.P. Stevens & Co., Inc.*, 157 NLRB 869, 880 (Stevens I) and *J.P. Stevens & Co., Inc.*, 179 NLRB 279, 284 (Stevens VII), where similar violations were the subject of Board remedies.

[58] Following the speeches in April, the Company posted a notice (GC 612) pertaining to efforts by NLRB agents to consult with card signers in preparation for the instant hearing. That notice urged employees to testify truthfully, but in the body thereof, the following statement appears:

> The NLRB agents are interested in whether you signed a card because you were misled into believing it was only to get an

thereby violated Section 8(a)(1) by having "instructed employees as to how they could invalidate union authorization cards when they were called as witnesses in a Board proceeding."

The evidence of record supporting this allegation consists of the prepared speech given by plant manager Shelton and Wellons on or about April 13 and 14, 1977 (GC 626), a notice posted by the Respondent on or about April 26, 1977 (GC 612), and the document outlining comments and statements by identified employees which were noted by management at the so-called round table discussions (GC 630). This documentary evidence, obtained by the General Counsel through subpoena, was complimented by a rebutal [sic] witness called by the General Counsel, William S. Buckley, the general manager at the Wallace plants. However, apart from the speech the evidence does not reveal specifically what was said to the employees by management representatives at the group meetings. As the General Counsel called no employee witnesses to confirm what transpired during those sessions, the record furnishes no basis for concluding that in the course thereof, Respondent engaged in unlawful interrogation, solicited grievances, promised benefits, or made any coercive threats. All such matters are left to inference, and as the Respondent did not examine Buckley, or put forth evidence which conceivably could neutralize such inferences, any finding that employees were exposed to classic forms of restraint during the course of those meetings would derive from an incomplete record, and thus involve a denial of due process.

It is true that facts which are admitted beyond controversy convincingly establish that Respondent was willing to risk an interference with testimony given in a

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NLRB election, or pressured, or if you really intended to designate the Union as your agent. These are important legal questions which may determine whether you are unionized or not.

Board proceeding, and render itself vulnerable as the catalyst for the widespread incredible testimony given by employee witnesses many of whom attended those meetings. Yet, since unaccompanied by other forms of coercion, I am unaware of precedent under this Act which condemns such conduct. Accordingly, in agreement with the Respondent's contentions I find that the General Counsel has not made out a *prima facie* violation on the facts that are clearly beyond controversy. Beyond that, the allegation has not been conclusively litigated, and in this respect the motion to amend the complaint is denied.

(2) Respondent's challenge to the Union's majority

The cards on which the claim of majority is predicated are unambiguous, single purpose cards, declaring the Union to be the bargaining representative of the signer. Respondent asserts that the Union at no time represented a majority of employees in the appropriate unit. In its brief, Respondent specifically contests 143 cards which were received in evidence as supported by *prima facie* evidence of their authenticity. The contested cards are challenged on six different grounds and following the grouping set forth in Respondent's brief the issues raised are disposed of under the following headings: [59]

(a) *Alleged forgeries*

1.[60] *James O. Davis* (GC 103). The General Counsel does not dispute the testimony by Davis that the card appearing in evidence bearing his name was neither signed by him nor executed pursuant to his authorization.

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[59] Those cards which have been deemed valid in the face of Respondent's challenge are listed on "Appendix B" attached to this decision.

[60] The signers whose cards have been counted as valid designations are numbered. Those whose cards have been rejected are not. The numbers appearing in the text correspond with the listing of valid cards appearing on "Appendix B."

On the other hand, the General Counsel relies on the further testimony by Davis that during the campaign in 1974 through 1975, he did execute a card on a representation by a union organizer who said that the card would show his interest in "getting the union. . . ." As observed by the General Counsel, consistent with the holding in *Hedstrom Company, a subsidiary of Brown Group, Co.*, 223 NLRB 1409, 1411, ". . . testimony of an employee is itself probative of a union's majority status in circumstances where the card has been misplaced." Although the origin of GC 103 arouses some concern, considering the frailities in recollection as to events occurring some 2 and 1½ years earlier,[61] it is my view that the erroneous presentation of this card should serve as no-bar to the designation by Davis, evident from his parole testimony that he executed a card on behalf of the Union in the course of the campaign. Accordingly, his designation shall be counted toward the Union's majority.

2. *James H. Satchell* (GC 91) credibly testified that his signature does not appear on the card offered in his behalf. He further testified, however, that when a union organizer came to his home and solicited his signature, he first indicated that he would not sign, but then states, that he informed the organizer that he did not have time, that he was on his way to work, and indicated "Well, if you want to have it signed, sign it yourself." Satcheli went on to testify that, by these words, he did not intend to direct the union organizer to sign a card on his behalf. On cross-examination, it was developed that the completion of the card was witnessed by Satchell, and that Satchell admittedly furnished the organizer his telephone number and post office box number, which appear on the card. Quite obviously, Satchell was far more cooperative

[61] Apart from Davis, there is no credible suggestion in this record that offered cards bore forged, unauthorized signatures. It is my understanding that Evelyn Estell Gore and possibly one other employee, questioned the validity of their designation on this basis. As shall be seen *infra*, Gore was discredited in this respect.

with the union organizer, than his testimony on direct attempts to convey. He admittedly had read an authorization card prior to this incident, and in my opinion, his effort to portray the authorization to effect his signature on such as card as a fleeting, offhand means of getting rid of the organizer, was predicated on unbelievable testimony. In counting his card as a valid designation, I note in passing, that concern does exist that this incumbent employee's incredible testimony might well find its origin in the speech conducted by plant manager Shelton in April 1977.[62]

(b) *Unauthenticated dates*

3. *Tison Carr* (GC 357). Respondent correctly observes that the card introduced through this employee was not authenticated as to date. However, Carr, an incumbent employee at the time of the hearing, with 14 years service, testified credibly that he executed the card prior to the election and during the campaign.[63] More specifically, Carr defined the campaign as that which ended with the election in 1975, and specifically testified that he executed his card in 1974. Accordingly, based on his believable testimony, I find that, contrary to the Respondent, there is no possibility that this designation was stale, and hence it shall be counted toward the Union's majority in this proceeding.

Fred R. Dobson (GC 373). This card has been rejected on other grounds. Dobson was not on the February 19, 1975 eligibility list. See Appendix D.

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[62] It is noteworthy, that Satchell, who attended such a meeting, claimed no recollection whatever of the content of Shelton's remarks on that occasion.

[63] See *James Innaco d/b/a Skyline Transport*, 228 NLRB No. 21, JD p. 5, fn. 12, (1977), holding that the absence of dates on cards does not affect their validity where the signatory testified as to the approximate date.

4. *Ruth B. Cavenaugh Costin* (GC 359). Costin, an incumbent employee at the time of the hearing, specifically testified that she recalled the union campaign in 1974 through 1975, and that she executed a union card during that period. It is found that her testimony related exclusively to her execution of GC 359, and accordingly, I find that said card constitutes a timely valid designation of the Union.

5. *Thurman Graham Franklin* (GC 382). Franklin, at the time of the hearing, was an incumbent employee of the Respondent. His signature appears on a list of employee organizers who attended union meetings during the 1974 through 1975 campaign. He credibly testified that the card in evidence on his behalf bears the handwriting of coworker Earl Autry who was authorized to complete it by Franklin, and that after the card was filled in by Autry, the card was returned to Franklin, who found that the information was accurate. I find that Franklin credibly authenticated the date thereon through his testimony that he affirmed the correctness of all entries made on the card by his coworker. His card shall be counted toward the Union's majority in this proceeding.

6. *James Edward Hicks* (GC 407). Hicks testified that he signed a card during the 1974-1975 campaign, but could not recall whether this occurred prior to the election. Phillip Pope, a nonemployee union organizer, who was responsible in large measure for coordinating activities of nonemployee organizers during this campaign, admitted that the efforts to obtain signed authorization cards continued after the February 19, 1975 election. According to the testimony of Hicks, the card was filled in for him by Willie Brice, who had previously testified in support of three other authorization cards, and was not recalled to validate the date appearing on that of Hicks. The General Counsel sought to clarify the uncertainty expressed by Hicks as to when the card was signed, through the official time receipt stamp of Region 11 of the National Labor Relations Board. The card in

question is time-stamped, December 17, 1974. In agreement with the General Counsel, I find that the official agency action evidenced by the receipt stamp,[64] sufficiently enforces the belief by Hicks that he executed the card during the 1974-1975 campaign to support the conclusion that it constituted a timely valid designation.

7. *Ruth Smith* (GC 516). Smith could not authenticate the date appearing on her authorization card. However, she credibly testified that she signed that card on the same day that she made all entries, including the date, on GC 511(a), the authorization card signed by her husband, Dunnie Smith. This latter card was dated 9-24-74. Based on the credited testimony of Ruth Smith, while noting that, except for the signatures, GC 511(a) and GC 516 appear to have been penned by the same hand, it is concluded that Ruth Smith executed her card on September 24, 1974.

8. *Mamie Twitty* (GC 531). Twitty, an incumbent employee of the Respondent, testified that she authorized another individual to execute a card in her behalf during the union campaign at Wallace. Twitty could not clearly identify the date appearing on that card. However, the card bears an official receipt stamp of Region 11 of the National Labor Relations Board dated December 17, 1974, and in view of the credited testimony of Twitty that she attended a union meeting in October 1974 in which the purpose of that type card was discussed, I find that, for purposes of this proceeding her designation of the Union was timely, and it contributes to the alleged majority.

9. *Ronnie Williams* (GC 563). Williams, an incumbent employee, testified that he signed after his sister entered all information thereon. He checked the accuracy of the contents of the card before signing, but could not recall whether a date was on it when he did so.[65] Nonetheless,

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[64] *Ferland Management Company*, 233 NLRB No. 69, JD p. 14.

[65] The signature on GC 563, consistent with Williams' testimony appears to differ from other entries on that card.

based on his testimony that he executed a card during the 1974-1975 campaign, and the fact that his card bears an official receipt stamp of Region 11 of the National Labor Relations Board, I find that his card should be counted toward the Union's majority in this proceeding.

10. *Glen Scholar* (GC 724). Scholar was an incumbent employee at the time of the hearing. He acknowledged all entries on GC 724 except the date. He could not recall having placed the date on the card and could relate nothing concerning its origin. In view of Scholar's testimony that he was relatively certain that the card was executed before the election, and his indication that he signed it because he wanted an election, I find that it constituted a valid designation of the Union for purposes of this proceeding.

11. *Deleon Simmons* (GC 725). Simmons was an incumbent employee of Respondent who denied knowledge as to how the date was entered on his authorization card. Based on his testimony that he executed the card before the election during the campaign in question, I find that it constituted a valid designation of the Union.

12. *Nelson Caraway* (GC 147). Purusant [sic] to request of the undersigned, Respondent at the hearing date of June 10, 1977, furnished as Respondent's Exhibit 15(a) and (b), a "current listing of Stevens' employees at the Holly and Carter plants." Respondent 15(b), containing the names of Carter plant employees as of March 29, 1977, includes the name Nelson C. Caraway. GC 147, was authenticated by Louis Washington a nonemployee organizer. Though I was convinced that Washington had no independent recollection of the circumstances surrounding completion and execution of this card, his authentication of the card was based on recollection refreshed by aids historically recognized as permissible for such purposes. As Caraway was not called, the testimony of Washington that he placed the date on the card in Caraway's presence is credited. I find that this union card constituted a

timely and valid designation of the Union for purposes of this proceeding.

13. *Dwight Eric Bannerman* (GC 573). Bannerman, an incumbent employee at the time of the instant hearing, could not identify the date appearing on his authorization card, but indicated that he signed the same before the election. Bernice Jenkins, an employee organizer testified that he placed the date on the card immediately after Bannerman signed it. I find that General Counsel Exhibit 573 constituted a timely, valid designation of the Union.

14. *Richard A. Williams* (GC 742). Credibly testified that he signed his card after the date was placed on it by someone else, and that he did so before the election. Although he could not be certain that the date appearing on the card was the actual date of execution. I am convinced nonetheless that the card was executed before the election and during the 1974-1975 campaign. His card constitutes a valid designation of the Union.

15. *Mary Carter* (GC 113). The card of Mary Carter was authenticated by Raymond Paulhus, a nonemployee organizer who testified that the card contains the handwriting of the signer. Subsequently, Mary Carter was called as a witness for the Respondent. She reflected a bias and her testimony was unbelievable insofar as prejudicial to the General Counsel's position in this case. In any event, Carter did not dispute the authenticity of the date appearing on GC 113, and it is clear from her testimony overall, that the card was executed during the 1974-1975 campaign, and prior to the election. Her card is challenged on other grounds which shall be discussed, *infra*, in connection with issues bearing upon the validity of the card executed by her husband, David Lee Carter.

16. *James M. Henry* (GC 152). The authorization card of Henry was authenticated initially by Louis Washington. Washington testified that he inserted the date on this card, in the presence of Henry. Henry was

subsequently recalled by the Respondent, and acknowledged that the signature appearing on General Counsel Exhibit 152 was his own, but asserted that he could not recall signing the card. The thrust of Henry's testimony struck me as a contrived, unbelievable effort to repudiate his action in signing the card. It is noted that Henry attended the meeting conducted by Plant Manager Shelton in April 1977. Although Washington concededly did not have the clearest capacity for independent recall, and his testimony in connection with this card was unaided by resort to aids qualifying as past recollection recorded, the testimony of Henry on its face was so unbelievable as to actually enforce Washington's testimony that the card was executed prior to the election on the date that it bears. I find that GC 152 constitutes a valid designation of the Union.

17. *Gloria Alford* (GC 345). Alford's card was authenticated by employee Emma Hayes. According to the latter, she gave Alford a card, and that same morning, Alford returned it to her. Hayes examined the card and called Alford's attention to the fact that she had omitted certain information. Alford told Smith to make the entries. Hayes did so. Based on the credited testimony of Hayes, I find that the card was executed on the date that it bears, and constitutes a valid timely designation of Union.

(c) *Ineligible, as not in unit*

18. *Kathleen P. Writer* (GC 571). Respondent contends that the card of Kathleen Writer should be rejected based on her testimony that she quit in December 1974 prior to the critical date of February 19, 1975. Although the testimony of Writer is susceptible to such an interpretation, this claim by the Respond [sic] is inconsistent with the spirit and letter of a stipulation made by the parties at the hearing. Thus, General Counsel Exhibit 628 was agreed upon by all parties as containing the names of the employees in the appropriate unit as of February 19, 1975. It was my understanding, and the understanding

of all parties, that that list was to be afford controlling weight with respect to the issue of eligibility. The list was developed, not in shotgun fashion, but over a period of weeks with all parties having input with respect to its content. GC 628 was entered in evidence pursuant to a stipulation "that that list is an accurate representation of the names of all employees in the unit on the critical date for purposes of this proceeding." [66]

As Kathleen P. Writer appears as number "994" on GC 628, I find that she was eligible, and that her properly authenticated union card, constitutes a valid designation for purposes of this proceeding.

The same conclusion is reached with respect to the following employees:

19. Johnathan Moore (GC 713) #572

20. Katie Rosemary Bryant (GC 350) #115

21. Thomas D. Cole (GC 360) #166

Their cards shall be counted as valid designations.

Leroy Howard (GC 342). This card is rejected inasmuch as Howards's name does not appear on the agreed upon eligibility list.

Furthermore, though not specifically contested, cards of the following individuals are rejected as the signatory does not appear on the eligibility list:

Batts, Adrian	GC 39
Bryant, Paul	GC 256
Cobia, Willie	GC 112
Fulmer, Mary Ellen King	GC 280
Kennedy, Anita C.	GC 428
Kennedy, Harold G.	GC 430
Reese, Dorothy	GC 262
Tart, James E.	GC 17
Williams, Glenda	GC 169
Willis, Joann R.	GC 122
Dobson, Fred R.	GC 373
Underwood, Geraldine	GC 106

[66] The only exception to the binding nature of this document related to inclusion of persons not on the list, as to whom a reasonable expectancy of recall was affirmatively established.

(d) *Cards executed prior to the instant organization campaign*

Three cards which are in evidence bear dates in August 1974. Respondent contests their validity on the grounds that they were executed prior to the inception of the organization campaign. In this connection, it is noted that, according to testimony of union organizers, the instant campaign began in early September 1974.

22. *John R. Garvey* (GC 392) authenticated his card and conceded that the date appearing thereon, August 22, 1974, might have been erroneously inserted. Based on his testimony that he signed a card during the campaign and that at the time of execution he expressed his desire to "vote for" the Union, it is concluded that this card was executed during the 1974-1975 campaign, and that it constitutes a timely designation of the Union.

23. *Gloria Ann Morris* (GC 465) (a) and (b). The issue raised by Respondent is of no moment in the case of Morris, for she authenticated two cards. Since I credit her testimony with respect to GC 465(b) which bears the date of September 24, 1974, I find that, on the basis of that card, she effectively designated the Union as her representative during the campaign in issue.

24. *Herman Vance Wallace* (GC 535) was an incumbent employee, who testified that he received a union card in the mail, and that because his wife had better handwriting, he asked her to fill it out and sign it for him. The date appearing thereon was corrected, and reflects that an "8" designating August, was marked over with a "9" designating September. Nonetheless, Wallace clearly testified that he directed his wife to sign the card before the election, and considering his status as an incumbent employee, I find that the card was executed on a timely basis during the 1974-1975 campaign.

(e) *Revoked designations*

Respondent contests the validity of authorization cards executed by *Reba English* (GC 225), *Faith Andrews* (GC 194), *Elton Farrior* (GC 30), *Tommie Parker* (GC 298), *Marvin Parker* (GC 131), and *Garland Hines* (GC 15), on grounds that each took steps to revoke their otherwise validly executed authorization cards prior to the critical date for assessing the Union's majority. In *Quality Markets, Inc.*, 160 NLRB 45, 53, the Board stated:

> It is well settled that where an employee revokes an authorization to a union to represent it and seeks, however unsuccessfully, to retrieve the card prior to the date upon which majority status is sought that card may not properly be included among those whom the Union claims to represent.

On the other hand, the Board has held that such revocations are to be given no effect where attempted in an atmosphere of intimidation and unlawful conduct.[67]

With these considerations, the attempted resignations are considered as follows:

Reba English (GC 225). An authorization card was validly executed in her behalf on January 4, 1975. That card was initially authenticated by union organizer Mike Black. English testified that her husband opposed her involvement with the Union, but, at her daughter's suggestion, she permitted her daughter to complete a card. This was done to avoid problems with her husband. She claims that after talking with her husband that evening, she telephoned Black that same day, advising him that her husband did not want her to have any part of the Union. She told him to tear the card up. Black indicated that he would. Black's own testimony indicates that this card was completed with expressions of reluctance by English. He was not examined as to the alleged revoca-

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[67] See e.g., *Serv-U-Store, Inc.*, 225 NLRB 37, 39.

tion, and hence the testimony of English stands uncontradicted. In assessing English's credibility, it is noted, that Black did not remit this card to the Union, but retained it in his possession until shortly before the instant hearing.

Although English attended the meeting in April 1977 in which Wellons gave the antiunion speech and conducted the group meetings, I credit her testimony. She impressed me as a believable witness, and viewed against other objective facts, her uncontradicted testimony was entirely probable. I find that she did in clear and unambiguous terms attempt to revoke her card on January 4, 1975, when only the most isolated unlawful activity in connection with this campaign could have occurred. I am convinced, that the revocation was occasioned solely by a firming up of the misgivings held by English at the time she authorized her daughter to execute a card in her behalf. Her card shall not be counted towards the Union's majority.

25. *Faith Andrews* (GC 194). Mike Black initially authenticated a card dated January 15, 1975, executed by Andrews. It is the sense of Andrew's testimony that in signing a card, Black represented that it was not for the purpose of membership, but that 3 or 4 days after his visit, she received in the mail, a white card, which in fact was a membership card. Andrews went on to testify that 3 or 4 weeks before the election, she telephoned Black and told him that she wanted him to return her authorization card. She testified that Black told her that if she did not want the white membership card, which she received in the mail, simply to throw it in the trash. Although it is possible that Andrews may have attempted to revoke her card, her testimony as to why she did so did not have a ring of truth. She creates the impression that she reacted upon discovery of misrepresentations by the solicitor as to the membership consequences of executing an authorization card. It is difficult

to believe that in any subsequent telephone conversation with Black the latter did not disabuse her of any notion that a misrepresentation had been made, by simply explaining to Andrews that the white membership card she received in the mail did not have to be signed, and that in fact his statements to her at the time of the execution of the authorization card were correct, in that she entailed no membership obligation by executing the same. Although her testimony that she attempted to revoke the authorization card was uncontradicted, my suspicion as to the truthfulness of her account is sufficiently strong to reject her vague testimony as to when it occurred. Instead I attribute any such revocation to the Employer's unfair labor practices. Accordingly, I reject her testimony both as to the reason she sought such revocation and as to the timing of her attempt to effect it. Accordingly, as to the proof does not demonstrate that this lawfully executed card was revoked prior to the unlawful grants of the unemployment supplemental benefits and the new floor on profit-sharing losses, I find that the card is valid, and counts toward the Union's majority in this proceeding.

26. *Elton Farrior* (GC 30) admittedly signed a card during the union campaign. The card in evidence which bears his signature is dated February 5, 1975. Farrior testified that after he executed the card, he told union organizers Pope and Washington that he wanted his card back. They indicated that it was too late, that the card had been sent off and that he would get a white membership card in the mail. Farrior gave no explanation as to his reasons for seeking the revocation. His testimony as to the timing of this effort failed to reflect a clear recollection. Thus, he initially testified that he thought the day after execution that he attempted to get the card back, and later, when examined as to whether this incident occurred prior to the election, he responded that "I don't remember but I think so." It is true, that the

Farrior card was executed after the unlawful establishment of a floor on profit-sharing losses, an unfair labor practice of general impact upon the employees. It is entirely possible, however, that any attempt to revoke came after the February 11 announcement of the floor on unemployment insurance. The fact that an employee may have signed a card in the midst of unlawful conduct, does not necessarily mean that his subsequent withdrawal of the designation, was prompted by other considerations. It is entirely likely that specific unfair labor practices have an impact on different employees for different reasons, and indeed the reversal of interests which unlawful conduct induces need not necessarily be expressed immediately. Since the *Gissel* doctrine is remedial, the resolution of ambiguities concerning issues as to the validity of the union's majority against the perpetrator of unfair labor practices is in consonance with the spirit of that decision. With respect to the Farrior card, there being no clear evidence that Farrior sought revocation under conditions unrelated to Respondent's unfair labor practices, I find that the revocation was ineffective, and that his card supports the Union's alleged majority in this case.

Tommie Parker (GC 298). A card is in evidence bearing Parker's signature and dated December 10, 1974. That card was credibly authenticated by Bernice Jenkins. Parker testified that Jenkins, a fellow employee, had been after him to sign a card for 3 weeks. Before he agreed to sign a card, he instructed Jenkins to hold the card, advising that he would let Jenkins know whether to forward it to the Union. Parker claims that after discussing the matter with his parents, both of whom were then employed by the Respondent, and about 3 days after he signed, he asked Jenkins to return the card. Jenkins told him if he wished it back, he would have to go to a union meeting to retrieve it. Parker claims that he did so, and that he was unable to get the card back, but that an unidentified individual, representing himself to be a union representative, told him that the card would not be used.

Although Parker attended the April 1977 meetings conducted by his plant manager in which the means of repudiating signed cards was discussed, and while I have certain misgivings concerning his testimony, his account stands uncontradicted, and on balance I am willing to accept it. Accordingly, I find that Parker did attempt to revoke his card prior to any significant unlawful activity in connection with this organization campaign, and therefore find that it should not be counted towards the union's majority.

26. *Marvin H. Parker* (GC 131), an active employee of Respondent at the time he testified, related that he attempted to revoke his authorization card after learning of the Union's claim to boycott Respondent. Nowhere in his testimony does he identify when this attempted revocation occurred. While his testimony does not substantiate that any such revocation was attempted on a timely basis, it is also noted that Parker was a thoroughly unreliable witness, whose testimony, at every turn, reflected a biased attempt to support the interest of his employer. Not only do I reject his testimony, and find that he never attempted to revoke his card, but I further discredit his claim that he signed a card, without reading it, on the representation that it was solely for an election. Although my rejection of his testimony insofar as he attempts to repudiate the validity of his card is based upon other considerations, I note that Parker attended the April 1977 meetings in which Plant Manager Wellons addressed employees concerning the issues in this proceeding. I find that the card executed by Parker constituted a valid designation of the Union which remained effective through February 19, 1977.

28. *Garland Hines* (GC 15) was a thoroughly untruthful employee witness, who acknowledged the execution of an authorization card on request of employee solicitor Jimmy Smith. He further testified that about 3 days after he signed a card, he asked that his card be returned. In this respect, Hines testified as follows:

Q. Who did you ask about getting your card back?

A. I don't remember, it's been so long.

Q. Do you know if it was Jimmy Smith?

A. No, it wasn't Jimmy Smith.

Q. Do you know if it was one of the union representatives?

A. It was one of the union representatives.

Q. Do you recall where?

A. He stayed in an apartment house in Wallace.

Q. You went to the apartment house?

A. Me and another boy went.

Q. Who was that?

A. Bobby Harble.

Q. Can you describe that union organizer you met with at the motel—apartment house?

A. No, I couldn't.

Q. You can't remember what he looked like?

A. I sure couldn't.

This is the entirety of Hines' testimony concerning the identity of the individual from whom he sought return of his card. Under well established Board policy, an authorization card is not to be deemed effectively revoked in the absence of notification to the Union or an agent thereof.[68] The testimony of Hines is insufficient to substantiate that this condition was met. To find otherwise, is to accept the witness' conclusion or belief, though unaided by refutable foundation, as to the agency status of an unidentified individual. This is not competent evidence and, accordingly, even if credited the testimony in question furnishes no substantial basis for invalidating the card. It shall be counted towards the Union's majority in this case.

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[68] See *Struthers-Dunn, Inc.*, 228 NLRB No. 9, p. 3.

(f) *Miscellaneous misrepresentations*

The Respondent challenges three cards on grounds that the cards were either executed on improper inducements, or by individuals possessed of insufficient knowledge to be bound thereby. The issues relative thereto are discussed below:

29. *William Henry Herring* (GC 406), at the time of the hearing, had been employed by Respondent continuously for a period of some 11 years. He testified that he obtained an authorization card at the plant gates, then took it home, where he put it on the dresser. He claims that his daughter picked up the card, read it and then asked if Herring wanted her to sign it. Herring claims to have said "Sign it if you want to." She did so. Herring acknowledged that the card was completed in his presence, and that with the exception of the address, which was entered by his wife, all other handwriting on the card was that of his daughter. Herring testified that he does not read and write too well and that he did not read the card. He indicates that his daughter did so, but explains that he was "about half asleep, . . . and . . . had to work, too." Herring testified that after the card was completed, he turned it over to some unidentified individual. Insofar as Herring attempts to imply that he lacked an understanding of the meaning of his daughter's execution of a card in his behalf, or that he authorized her to do so, though not really interested in the Union, he was not believed. I find this card to constitute a valid designation of the Union which shall be counted toward the Union's majority.

30. *Carroll Hunter* (GC 413) was an incumbent employee at the time of the hearing. He testified that he obtained a card at the plant gate, and that after a meeting, he took it home. He relates that, after telling his wife "about it," his wife asked if Hunter wanted her to fill it out. According to Hunter, he told her it made no difference and that she could do as she wished. His wife

completed the card, and Hunter picked it up and placed it in the mailbox. Although Hunter indicated that he could read, he claims that he never read the card, but knew that it was a union card. He also indicates that his wife normally conducts business for him because she had better handwriting. Although it is the sense of Hunter's testimony that he attended the union meeting concerning the card, he does not indicate that any representations were made to him inconsistent with the clear import of the purpose expressed on the card itself.[69] Furthermore, the fact that an employee may delegate his choice to a close member of his family furnishes no ground for invalidating otherwise validly executed authorization cards, where as here, the employee has confirmed and ratified the designation by mailing the card to the Union. The card executed on behalf of Carroll Hunter was a valid designation, and shall be counted towards the Union's majority in this case.[70]

31. *Wanda Marie Whaley* (GC 549) acknowledged that she signed and filled in the authorization card which is in evidence as her designation of the Union. Following this authenticating testimony, Whaley engaged in an unbelievable attempt to repudiate her card. She claimed that a fellow employee, Stewart Brown, asked her several times if she wanted to sign a card for the Union, but that

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[69] See *New York Patient Aids, Inc.*, 228 NLRB No. 151 where cards were found valid notwithstanding that employees testified that they hadn't read cards before signing and did not understand were authorizing the Union to represent them, where the Union had not told employees cards were solely for the purpose of obtaining an election. The cards were unambiguous, and employees knew they were signing a card for the Union, thereby indicating their desire for union representation.

[70] The testimony by Hunter that he thought that the card had to be signed to enable him to obtain a ticket to attend one of the inplant meetings conducted by union representative McIver under the terms of the contempt Order, though hardly believable, is nonetheless immaterial.

on each occasion she told him that she did not know much about the Union and did not know if she wanted it or not. Brown allegedly then indicated that if she signed a card, someone would come by and talk to her about the advantages of belonging to a union.[71] She could not recall whether she signed the card and returned it to Brown, or how long she had it in her possession before doing so. She claims, however, that union organizer Pope subsequently visited her at her home and talked to her after she had signed the card. She indicated that it was her recollection that Pope possessed her signed card at the time of this visit. There is no further testimony concerning what transpired during this confrontation with Pope. Although claiming that she signed the card in the interest of obtaining more information, Whaley denied that she ever read the card before signing it.[72] As a final stroke in her testimony, she testified that when she signed the card she had made up her mind, "that I definitely did not want a union." Whaley struck me as a thoroughly unbelievable witness. Her testimony is replete with material contradiction, was implausible, and I was left with the strong feeling that she testified out of a bias favoring the Employer. Although Whaley was not employed at the time of the hearing, she did discuss her appearance with Jack Cottle, Respondent's personnel director of the Wallace plant, and expressed that she was unhappy with the fact that she had been subpoenaed. Having rejected her testimony as incredible, I find that her card constituted a valid designation contributing to the Union's majority in this case.

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[71] Whaley first indicated that Brown did not mention an election to her, but then goes on to indicate that he did.

[72] When confronted with a statement given to the General Counsel before the opening of the hearing, which indicated that upon execution she had read the card, Whaley indicated that she did not "remember" reading it at that time.

(g) *Just for an election*

Respondent contests 108 authorization cards as having been procured on representations that they would be used solely for an election. The cards utilized in the campaign were of the single purpose variety and reflected the following:

TEXTILE WORKERS UNION OF AMERICA
Affiliate of the AFL-CIO and CLC

(DATE) ————————, 19—

I hereby join with my fellow workers at the ——— mill in organizing a union in order to better our conditions of life and secure economic justice, as is my right under the laws of the United States. To this end I declare that the Textile Workers Union of America, AFL-CIO and CLC, shall be my representative in collective bargaining over wages, hours and all other conditions of employment. I make this pledge of my own free will in the conviction that the united action of all workers through unions of their own choosing is the way to achieve the liberty of the individual for the benefit of all.

Mill ————————————————————

Department ———————————— Shift ———

Name ————————————

St. and No. ————————————

City ———————— Phone ———

————————
(received by)

The keystone for evaluating such representation was set forth in *Gissel, supra*, at p. 606, as follows:

> . . . we think it sufficient to point out that employees should be bound by the clear language of what they

> sign unless that language is deliberately and clearly cancelled by a union adherent with words calculated to direct the signee to disregard and forget the language above the signature.

The individual issues, are examined below:

32. *Lavonne Jarman* (GC 295). Jarman's card was initially authenticated by a fellow employee, Bernice Jenkins. Jarman acknowledged that he signed a card and read it before doing so. But later in his testimony he denied reading the language on the card evidencing a clear designation. His card is challenged on two grounds. First, Respondent contends that it was executed on the representation that it would be used solely for an election, and second, that he attempted to revoke the card some time prior to the election. In connection with the alleged representation concerning an election, Jarman admitted that he could not recall the exact words used by Jenkins but when cross-examined, as to their conversation, he stated as follows:

> He just asked me would I sign a card for him and I said, 'what kind of card,' and he said 'so that we can get an election within the plant for the union.'

He indicates that he told Jenkins he would sign, while asking if there was any obligation. According to Jarman, Jenkins indicated that there was no obligation.[73] Although Jarman was no longer employed by the Respondent, I have strong doubts as to his capacity for recalling the precise words used by the solicitor, and did not regard

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[73] Jarman's card is dated 11-5-74. He testified that shortly after execution of the card, he made unsuccessful attempts to retrieve it from Bernice Jenkins, and also wrote a letter explaining that he had been mislead into signing the card because he just wanted an election and did not wish to become a union member. He received no response from that letter. Jarman's testimony does not permit a finding as to whether revocation was sought prior to Respondent's unfair labor practices. Accordingly, there is no basis for concluding that this revocation was unprovoked by unlawful conduct.

him as a truthful witness. As Respondent's claim that execution of this card was induced by an improper representation is not based upon credible evidence, Jarman's card shall be counted toward the Union's majority in this case.

33. *Lillian Hughes* (GC 412). Her card reflects that it was executed in November 1974. She indicates that at the time she signed the card, nobody had asked to do so. She could not recall whether she obtained the card from a union representative who visited her at her home, or whether she obtained it at the plant gate. She acknowledged that she had been visited at home by union organizer Phillip Pope prior to signing the card. A series of highly prejudicial leading questions propounded by counsel for the Respondent produced the following responses by Lillan Hughes:

> Q. Did he tell you that the card was to be used only for an election?
>
> A. That's right, he said that if they got enough of them signed, that they would be allowed to go in and vote.
>
> Q. Did he tell you that the card would be used only for an election?
>
> A. It didn't mean that I would be in no union, it just gave them a chance to vote, a chance to get the union in.
>
> Q. Was it your understanding that the only thing it would be used for would be to get an election?
>
> A. Yes.

Later, Lillian Hughes went on to testify that she inquired of Pope as to what the card would be used for because she had heard so much talk about it that she wanted him to explain it to her. According to Lillian Hughes, "he explained the good parts that the Union would have and the bad parts that the Company; and he wanted those blue

cards signed, to get enough of them to see if they would be allowed to have an election inside the plant." Mrs. Hughes indicated that she did not sign the card in front of Pope, because Pope advised her that no one else would know who signed cards. Lillian Hughes at the time of the hearing was in the employ of the Respondent. The following colloquy between myself and the witness carries some significance to an evaluation of her testimony concerning any improper representation:

> Q. . . . Are you now afraid that people now know that you have signed a card?
>
> A. Yes.
>
> Q. Why are you so afraid?
>
> A. I have been under a lot of pressure since January.
>
> Q. Pressure because of this card?
>
> A. No, sir, it is personal.

Mrs. Hughes, on cross-examination, elaborated that the good parts about having a union were described by Pope as meaning that the employees would get more money, be treated fair and things like that. As her last utterance before departing from the stand, Lillian Hughes expressed the following:

> I don't know exactly all of it that he talked about. I wish that I had never invited him in the first place in the house.

34. *Brenda Hughes* (GC 187) is the daughter of Lillian Hughes. Her card was executed at least 6 weeks after that of her mother. She testified that she in fact induced her mother to sign the card based on Pope's representation that it was just for an election. Her testimony concerning her colloquy with her mother is as follows:

> She [Lillian Hughes] said she in fact was not going to sign it because she was not interested in the

> Union. She liked things just the way, just the way they was [sic]. And I talked to her about it, and I said, if it's just to get an election, you can't be doing anything wrong. And she said, 'you think so?' And I said, 'well, he told you it was just for an election.' And she signed it. And later she even said she signed it because of me, I got her in a big mess.

The testimony of Lillian Hughes fails to evidence that she executed the card after such a conversation with her daughter or that any such conversation in fact occurred. Indeed, she denied that anyone asked her to sign the card at the time she did so. Brenda Hughes could not recall signing a card, but acknowledged the signature on GC 187 as her own.[74] She testified that at the time that her mother signed the card, she [Brenda] was not eligible to do so.[75]

The testimony of Lillian Hughes that she executed a card upon the improper representation that it would be used solely for an election was, in my opinion, adduced through prejudical leading questions, obviously elicited from a witness ill-at-ease with her role as a witness whose prior conduct might not receive her employer's blessing. I find her testimony in this respect incredible. I am convinced that Mrs. Hughes was told nothing inconsistent with the clear and ambiguous purpose expressed on the card which she signed apparently after some deliberation. With respect to the testimony of her daughter, I regarded Brenda Hughes as a unreliable witness, willing to resort to contrivance to protect her mother from undefined pressures, which despite her denial, in the context of Lillian Hughes' testimony, I find to have stemmed from execution of a card. Further, while Brenda Hughes could not recall the circumstances surrounding her execu-

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[74] Non-employee organizer Michael Black credibly testified that all entries on GC 187 were made in his presence by Brenda Hughes.

[75] The basis for her assumption or knowledge that she was ineligible is not established on the record.

tion of a card, that which was credibly authenticated bearing her signature was dated January 16, 1975, one week after the preelection hearing in Case No. 11-RC-3987. I consider it improbable and unbelievable that Phillip Pope with all his experience would during that time engage in a meaningless exercise to obtain signed cards on a "just for an election" type inducement. I find that there is no credible evidence to substantiate Respondent's contention that either Brenda Hughes or Lillian Hughes executed their cards for a purpose other than that which is clearly expressed on the face thereof. Their designations shall be counted toward the Union's majority.

35. *Ricky Andrews* (GC 54) and 36. *Nancy Andrews* (GC 53) are husband and wife. Ricky Andrews did not identify where he obtained his card, but indicated that he read it, and asked his wife to sign it for him. The sole basis for any challenge to the validity of this designation, rests exclusively on his testimony that he understood that the card would be used solely for an election. Andrews did not identify the source or origin of this understanding. In accordance with established precedent, the subjective intent or understanding of the signatory is not a ground for invalidating an unambiguous authorization card. See *J. P. Stevens Co., Inc., Gulliston Div. v. N.L.R.B.*, 441 F. 2d 514 (C.A. 5).

Nancy Andrews authenticated her card, and indicated that she read it before signing it. Nonetheless, in response to leading questions by Respondent's counsel, Andrews indicated that she understood that the card would be used only for an election and that someone had told her this. Mrs. Andrews, however, could not identify the source of that representation. She could not even recall, with certainty, that such a statement was made by the person who gave her the card. At best, from the Respondent's point of view, the testimony of Nancy Andrews, merely establishes an understanding derived from "scuttlebut," and

considering the uncertainty of her recollection, and the vagueness of her testimony, no improper remark may be attributed to a solicitor or agent of the Union. I find that the cards executed by Nancy and Ricky Andrews constitute valid designations of the Union, and they shall be counted towards the Union's majority in the proceeding.

37. *Betty Jean Baker* (GC 164). Baker, at the time of the instant hearing, was in the active employ of the Respondent. She confirmed the authenticity of the card in evidence bearing her signature. The challenge to her card is based exclusively upon a series of highly leading questions propounded by counsel for the Respondent which is set forth in its entirety below:

Q. Did a man named Louis Washington, ever call on you at your home?

A. Yes.

Q. Did he ask you to sign a card?

A. I don't remember if he asked me to sign one or not.

Q. Did you sign more than one card?

A. I don't know.

Q. You don't recall?

A. No.

Q. Did Mr. Washington talk to you about what the card would be used for?

A. He talked about some things [sic] but what he talked about I can't remember.

Q. Did he talk about an election?

A. Yes.

Q. What did he tell you about an election and that card?

A. That they had to have so many cards signed before they could have an election.

Q. Did he tell you that the card would be used for anything else?

A. No.

Q. Did he tell you that the only thing that the card would be used for would be to get an election?

A. I don't think he did.

Baker testified that she read the card before signing it, and there is nothing in her testimony, suggesting that Washington did anything rescinding or inconsistent with the clear and unambiguous designation of the Union as her bargaining agent which appears on the face thereof. Under established board precedent, as well as the guidelines set forth in *N.L.R.B. v. Gissel, supra*, the above furnishes no substantial grounds for invalidating her card. Accordingly, it shall be counted towards the Union's majority.

38. *Dorah N. Batchelor* (GC 229) and 39. *Roland Batchelor* (GC 230), are husband and wife. Both were still employed by Respondent at the time of the hearing. Both signed cards upon solicitation by union organizer Phillip Pope. They attended the speech given by Mr. Shelton in April 1977 concerning this proceeding and the Union's attempt to get into the plant through authorization cards. Mrs. Batchelor testified that at the outset of her conversation with Pope, she told him that she was not interested in the Union, expressing a belief that her son had been fired because he signed a card for the Union. The Batchelors, at the time they signed cards, were of a view that the Union could get into the plant only by winning an election. Roland Batchelor, who followed his wife to the witness stand, testified in shotgun fashion that he was told by Pope that the card would be used to get a vote, and that Pope did not express that the card would be used for any other purpose. It was also plain from his testimony, that he changed his mind concerning the Union, and at the time that he executed a card, he

wanted the Union to come in. He attributed this earlier attitude as borne of a "lack of sense. . . ." As for Mrs. Batchelor, at one point in her testimony she did testify that Pope indicated ". . . that the card would never be used for anything else besides the electic , and that he would be disqualified in twelve months." Though the Batchelors impressed me as basically honest people, their testimony impressed me as influenced by a concern for their vulnerability were they to afford testimony supporting the Union's interest in this proceeding.[76] Neither impressed me as having the clearest recollection of what was said by Pope. Perhaps the closest approximation of what transpired was bared early in the examination of Mrs. Batchelor by Respondent's counsel, when she testified as follows:

> Q. What did Mr. Pope tell you that the card would be used for?
>
> A. About the same thing.
>
> Q. Tell us as best you can recall what he said?
>
> A. That is what I remember, that it was for an election.
>
> Q. Tell us what you remember?
>
> A. I can't remember exactly the words that he used.
>
> Q. As best you can, what did he tell you?
>
> A. He came in, and stayed a long time, and talked to me, and talked about signing the card but I still can't remember the exact words that he used.

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[76] Charles Epley is the son of Dorah Batchelor. In 1972, the Second Circuit Court of Appeals found Respondent in contempt of prior decrees. The discriminatory treatment afforded Epley supported the Court's determination in this regard as outlined at *N.L.R.B. v. J.P. Stevens & Co.*, 464 F.2d 1321, 1344-1345 (C.A. 2, 1972).

Q. Did he say anything that led you to sign that card?

A. Yes.

Q. What did he say?

A. He said that our working conditions would be better, and all like that.

Q. Did he mention an election?

A. Yeah.

Q. What did he say about an election?

A. He said that the only way that they would get in would be through an election, and if "enough of us signed a card to bring an election in."

Q. Did he say anything else about that card?

A. Well to the best of my rememberance, [sic] I can't remember exactly what he said.

In my opinion assessment of the Batchelors' union designations is to be judged exclusively in the light of the above testimony. It was the first attempt by either to explain fully what occurred in their meeting with Pope. I find nothing therein [77] which is inconsistent with the designations on the card, and shall count their cards toward the Union's majority in this case.

40. *Ella T. Batchelor* (GC 55). Mrs. Batchelor, at the time of the hearing, had been employed by the Respondent for more than 9 years. The challenge to her card was opened through the colloquy between Batchelor and Respondent's counsel as set forth below:

Q. What did she say to you when she gave you this card?

A. I don't remember.

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[77] Although Mrs. Batchelor testified that she did not read the card, her further testimony that she signed reluctantly in view of her son's discharge, and made all entries thereon, rendered her testimony in this respect unbelievable.

Q. Did she discuss using the card for an election?

A. Yes.

Q. Did she say that the sole use of the card would be to get an election at the company?

A. Yes, that was the understanding that I got.

Q. Is that what she said to you?

A. She said it wasn't a membership card.

Q. It was not a membership card?

A. That's right.

Q. And that the sole purpose of it was to get an election?

A. Yes.

The testimony by Batchelor that she executed a card on the representation that it would be used just for an election is discredited. She was a witness who obviously labored under a faint capacity for recollection. The asserted improper representation was extracted through highly prejudicial leading questions. She was unreliable in other respects as well.[78] As there is no substantial

[78] A significant number of witnesses testified that though they completed their card in its entirety, they did not read them. Ella Batchelor was one such employee. In her case, the initial denial was subsequently qualified by her expression that she did not "remember" reading it. I was suspicious generally as to the honesty of those who testified that they did not read cards before signing. A pattern existed whereby witnesses who could recall little of what transpired when they signed their cards, clearly could recall that they had not read them first. I did not believe this testimony and considered it unlikely that during this campaign of some 5 months, during which cards were disseminated by employee organizers, at the plant gates, through the mails, and on home visitations, cards were not read prior to signing despite their obvious importance to the controversial issue of whether a union would represent employees at the Wallace plants. Regrettably, from having observed the witnesses, and heard the repeated false ring of such testimony, it was definitely not my impression that this particular pattern of untruthfulness was either spontaneous in origin or attributable to coincidence.

credible evidence supporting the claim that this card was improperly secured, it shall be counted toward the Union's alleged majority in this case.

41. *Debra Ann Blizzard* (GC 232). The challenge to her card is based solely upon her testimony that she was told at the time of signing, ". . . that they needed so many cards to get an election, to have an election," and that she was not told that the card would be used for any other purpose. She admittedly read the card, and understood at the time of signing that a union could not get into the plant without an election. Under established board precedent, the statement she imputes to the unidentified solicitor does not constitute an inducement inconsistent with the purpose of the card clearly expressed thereon, and furnishes no substantial grounds for invalidating her designation. It shall be counted toward the Union's majority in this case.

42. *Bobby D. Boney* (GC 50). Boney was an incumbent employee at the time of the hearing, who declined to disclose the identity of the employee who had given him the card, stating ". . . he didn't have anything to do with me signing it he just gave it to me and it was just up to me to sign it or not to sign it." He went on to testify, however, that this individual stated in giving him a card that Boney would "be under no obligation" if I signed the card and that ". . . it'd be kept under strict confidence." When examined by Respondent's counsel as to whether this individual said anything about an election, Boney indicated that ". . . he said he wanted to get enough of those cards signed to see if we would get an election to see if the Union could come in or not." Although Boney initially testified that the foregoing was the sum total of what was the solicitor's comment concerning an election, apparently dissatisfied with this response, Respondent's counsel went on, as follows:

Q. Did he say the card would be used only for an election?

A. He said only for an election.

Boney's testimony concerning the only for an election representation was disbelieved as a byproduct of prejudicially leading examination. It is my assessment, that his earlier expression as to what the solicitor said concerning the election was accurate and complete. This, under established precedent, did not constitute a representation inconsistent with the designation on the face of the authorization. As for the statement Boney imputes to the solicitor concerning the lack of obligation in signing a card, this was left undeveloped except to the extent that Boney expressed his "understanding" that "there wouldn't be nothing after it, I wouldn't have to be sitting up here now." It is a fact that execution of an authorization card, of the type involved here, does not impose certain obligations, including those of union membership. The testimony concerning a remark by a solicitor that the card imposed no obligation was too vague to constitute a ground for invalidating Boney's card. It too shall be counted toward the Union's alleged majority.

43. *Julia P. Bostic* (GC 228) and 44. *JoAnn Piner* (GC 492) are sisters. Both testified that they signed cards at the request of union organizer Phillip Pope. They claimed that they did so on his representation that execution of the authorization card was simply to show that the signer wanted an election. Both admit that Pope discussed the benefits a union would seek on behalf of employees if it got in. They testified that Pope, when they signed, prepared a written document at the request of JoAnn Piner's husband. Bostic testified that this document recited that the sole purpose for which the cards were signed "was not that we were in the Union or ever were or would be in the Union but just so an election could be held." Piner could recall nothing in this signed statement other than an expression that by signing they did not become union members. Though both Piner and Bostic expressed the belief that this document existed, and indeed, Piner indicated that her husband had informed

her that it was in a file cabinet, the document was never produced.[79]

Bostic, though not an employee at the time of the hearing, was an unimpressive witness. Her testimony that she did not read the card, though completing it in its entirety, as well as her testimony that she did not know at the time that she executed the card that an election had already been scheduled, struck me as highly suspect.

Piner was an incumbent employee at the time of the hearing. The testimony of Bostic and Piner that Phillip Pope told them that the card simply evidenced their interest in an election was incredible. From my observation of Pope throughout the hearing, and upon examination of his testimony, it is noted that while not totally accurate, his extensive testimony struck me as that of an experienced organizer, who was neither dishonest nor stupid. The cards executed by Bostic and Piner are dated February 3, 1975 respectively. At the time of their execution, the election had been scheduled and publicized by various means. Indeed, on January 28, 1975, Gordon Walker, general manager of the Holly and Carter plants made a prepared speech to employees, the third paragraph of which was as follows:

> On Wednesday, February 19, as you have probably already heard, an election is going to be held here, so that you may all have the opportunity of voting as to whether *you do* or *do not* want to bring the Union into these plants.

Bostic and Piner did not impress me as unintelligent. I cannot believe that they did not know, at the time that they executed their designations, that they were completely unnecessary to the conduct of an election and that

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[79] It is noteworthy that prior to the instant hearing, in an interview with the General Counsel, the document in question was discussed.

one would be held no matter what they did.[80] It simply struck me as implausible that they would have signed a card on the representation they impute to Pope. In any event, I simply do not believe that Pope, with the election only 2 weeks away, would have engaged in such a self defeating, transparent attempt to mislead, particularly to Piner, who in all probability had expressed her support for the Union.[81] I discredit the testimony of Bostic and Piner insofar as it suggests that they signed under any improper representation concerning the election, but do find that they were both told and provided a written document to the effect that execution of a card did not make them union members. As there is nothing improper in such an expression, I find that cards executed by Bostic and Piner constituted valid designations and they shall be counted.

45. *Dorothy Bowden* (GC 148) and 46. *James M. Bowden* (GC 149) are husband and wife. Although their cards are dated January 24, 1975 and January 23, 1975, respectively, Dorothy Bowden claims that she and her husband signed at the same time.[82] According to her testimony, the cards were solicited by Louis Washington, who discussed the benefits of union representation and his own progress as a union member, and with respect to the authorization card, stated ". . . it wouldn't mean that I would ever be a member or have to be a member, that I wouldn't have to participate in any union organizational activities; it was only to help hold the election in the mill." Mrs. Bowden testified that she did not read the card, first indicating that she ". . . just signed the card, and that was it," but then going on to admit that she placed

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[80] Piner admits that she knew at the time of signing that an election was scheduled.

[81] Piner admittedly was for the Union when she signed her card.

[82] James Bowden did not testify. His card was authenticated initially by union organizer Louis Washington.

all the information on the card. Mrs. Bowden attended the speech and group meetings presided over by Shelton in April 1977. It was the sense of her testimony that she was opposed to the Union at present, as well as at the time that she signed the card. Yet, while admitting that Washington was in her home on that occasion for 45 minutes, and that she had the opportunity to read the card, she insists that she made all entries on the card, without reading its content. The misrepresentation ascribed to Washington by Mrs. Bowden was not inconsistent with the purpose expressed on the face of the card, and her testimony that she did not read it, fits a pattern of highly suspicious incredible testimony offered by employees to repudiate their cards. Her testimony in this respect was not believed, and I find that the cards of Dorothy and James Bowden constituted valid designations and they shall be counted toward the Union's majority in this case.[83]

47. *Peggy Bradshaw* (GC 215) and 48. *Thomas Bradshaw* (GC 214) are husband and wife. Both were actively employed by the Respondent at the time of the hearing. Peggy Bradshaw attended the speech given by Shelton in April 1977 which touched on testimony to be given in this proceeding.[84] She testified that at the time she signed the card she "skimmed over it." She also testified that she previously had seen a union card but also skimmed over that one. As for the solicitor, she testified that she was told the card ". . . would be for an election, to get the percentage that they needed." She claims that she was not told by the organizer that it would be used for anything else.

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[83] Dorothy Bowden at the time of the hearing was an incumbent employee of the Respondent. In addition James M. Bowden appears on the current list of employees furnished by the Respondent and in evidence as Respondent Exhibit 15(b).

[84] It is not without significance that Thomas Bradshaw testified that he could not remember whether he attended such a meeting, though conducted only 3 months before he testified.

Thomas Bradshaw acknowledged signing a card at the same time as his wife. He testified that the organizer did not discuss the benefits that the Union would seek on behalf of employees, but stated that the card would be used to help get an election and that a certain percent had to sign before you can have an election. Mr. Bradshaw denied that he read the card, but acknowledged that at the time of signing he knew that it was a union card, and that the Union could not get into the plant without an election. Like his wife, he made all entries on the card. Mr. Bradshaw claims that before signing his card he picked up one at the gate but did not read it, and then his testimony assumed a shifting course when he went on to explain that the card was attached to a leaflet which was put in the car for him, but which he declined to take. Here again, the representation ascribed by Peggy and Thomas Bradshaw to the union organizer was not inconsistent with the clear purpose expressed on the face of the card. Their claim either that the card was not read, or that it was merely skimmed over, had the familiar ring of the pattern of contrived testimony which was rendered by other unimpressive witnesses seeking to nullify their union designations. I find them valid, and both shall be counted.

49. *Charlie T. Brinson* (GC 49) was an incumbent employee at the time of the hearing. Respondent's Exhibit 5 is a questionnaire completed by Brinson for the General Counsel as part of the latter's preparation for trial. That exhibit was rejected and placed in the rejected exhibit file on grounds that it was cumulative. Having reconsidered that ruling, I find that my ruling was in error, and accordingly that document is hereby received.

Brinson acknowledged that he signed a card and made all entries thereon. He testified that he started to read the card before he signed but that he only read it in part. Neither through the substantially leading nature of questions propounded by Respondent's counsel, nor in his pre-

hearing questionnaire given the General Counsel, did Brinson indicate that he was told that the card was to be used solely for an election or for any purpose inconsistent with the terms thereof. One need not read much of the card to be alerted to the fact that it was for the purpose of "organizing a union." Brinson conceded that he could not recall everything that was said by the union organizer on that occasion. I find that this card constituted a valid designation and it shall be counted towards the Union's alleged majority in this case.

50. *Alvis Ray Brown* (GC 258), an incumbent employee at the time of the hearing, testified that he signed the union card at the urging of Phillip Pope. Brown claims that Phillip Pope told him that "he had to get a certain percentage of the cards signed to have an election." According to Brown, Pope did not indicate the card would be used for any other purpose.[85] Brown indicates that he probably read the card but could not remember whether he had. The evidence does not substantiate a representation by Pope inconsistent with the clearly expressed purpose on the face of the card, and the challenge to the card is not substantiated. It should be counted toward the Union's majority in this case.

51. *Hubert H. Brown* (GC 227) Brown testified that he was solicited to sign a card by union organizer Phillip Pope.[86] In describing his conversation with Pope, Brown testified that he ". . . said mostly for the election, to see if the Union would come in Stevens, if it would go for

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[85] Counsel for the Respondent, as was the practice with innumerable witnesses, elicited this information through a leading question. It is noted that such testimony is not regarded as sufficient to reflect an improper representation and is materially distinct from a clear statement by a solicitor that the card would not be used for any other purpose.

[86] Brown was apparently employed at the outset of the instant hearing, but terminated on July 1, 1977, prior to his testimony. His name appears on Respondent's Exhibit 15(b).

Stevens or for the Union." He was led to testify that Pope did not tell him the card would be used for anything else.

On cross-examination it developed that Pope's visit to his home lasted 1 and ½ hours. Brown then portrayed their discussion as centering upon a disagreement, with Pope arguing as to what benefits the Union could obtain for employees, and Brown countering with his opposition to the Union. Brown denied on direct that he read the card before signing, but admitted that prior to signing he received a card at his house, claiming that in this instance he threw it into the trash can after seeing it was "union." Indeed, Brown asserted that the card he signed at Pope's request was not even known by him to be "a union card." Brown, who at the time of his testimony was employed by another mill, struck me as an unimpressive witness bent on affording improbable testimony tailored to serve the interest of his former employer. I discredit him, and find that the challenge to his card is unsubstantiated. It shall be counted towards the union's majority.[87]

52. *Lois Brown* (GC 750) was an incumbent employee at the time she testified. She indicates that she signed GC 750 and that the handwriting appearing thereon was entirely her own. She claims that she was given the card by a fellow employee, Alvin Smith. She testified that, before she signed, Smith asked her to do so every day. She claims that she did not read the card before signing, but acted upon the explanation of its meaning given by Smith. Insofar as I credit the testimony of Brown, I find that Smith told her she would be a fool for not signing the card "because it meant more money and more condi-

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[87] The card in question bears the date of "January 23, 1974." Absent an effective challenge thereto, and considering the probilities supported by other facts of record, it is inferred that Brown misdated his card, and that it was actually intended to reflect "January 23, 1975." It is not insignificant that at that time the effort on the part of the Union to obtain signed authorization cards had been in continuous progress for a period of 4 months.

tions." It is also possible that Smith went on to indicate that the card would be used for an election. Aside from this, I discredit Brown's testimony that she did not know that by signing the card she was helping to bring the Union in the plant, that she signed the card because she was tired of being harassed and aggravated by solicitors, and that she did not read the card before completing it in its entirety. I find that the challenge to her card rests upon incredible testimony, and that it constituted a valid designation of the Union.

53. *Shelby Brown* (GC 175) was an incumbent employee at the time of the hearing, who testified that she directed an unidentified individual to complete a card for her. This occurred at a hog killing, apparently a form of celebration in rural communities, which was attended by about 20 people. At the time, union organizer Louis Washington was present discussing the benefits of unionization, and seeking designations from other Stevens employees in attendance. She claims that about 10 others signed cards on that occasion. She admits that Washington had no direct conversation with her, but claims that she agreed to designate the Union, because she heard him say ". . . that if we signed the blue card that it was just to get an election in the plant, that it couldn't hurt us . . . ." She testified that before signing she had seen many cards, but had never read one. In this connection, she also testified that Bernice Jenkins, one of the principal employee organizers, had talked to her all the time about the Union, but never asked her to sign a card.[88] It was my impres-

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[88] Louis Washington initially identified the card of Shelby Brown and he testified erroneously that her signature appeared thereon. I would note in this connection, unlike instances where I have credited Louis Washington, his testimony was unaided by a "contact card" which normally was completed at a time reasonably contemporaneous with execution of authorization cards, and which was the type of document used as a memory refresher by non-employee organizers testifying at this hearing.

sion that the statement Brown imputes to Washington was not actually made, but rather, that she was relating an understanding, perhaps implanted during the April 1977 meetings conducted by her plant manager, which she attended. I find that Brown authorized the execution of a card in her behalf, and that she did so unprovoked by any improper representation. The card shall be counted towards the Union's majority in this case.

54. *Ronnie Burney* (GC 351) was an incumbent employee at the time he testified. He acknowledged that he signed the card, given him by a fellow employee, describing the circumstances under which he executed it as follows:

> I got this card from a guy that works at Stevens at the time when I was coming in. I was working on the second shift from 4 to 12 that night; and one of the guys that worked at Stevens on first shift, he gave me the card. I looked at him, at the time the shift was changing, but I didn't read it; but I did know kind of what it was about; but I went ahead and filled it out and later on I read it. He told me that in order for us to get a union, in order for us to vote, that we had to sign up enough of these blue cards in order to get a vote for the Union.

The only evidence supporting a challenge to this card is derived from a highly leading examination on the part of counsel for the Respondent, which appears in the record as follows:

> Q. (By Mr. Geddie) Someone told you that you would have to have enough cards to have an election?
>
> A. Right.
>
> * * *
>
> Q. (By Mr. Geddie) Did anyone tell you that the sole purpose of this card would be to get an election?
>
> A. Yes, Ray Anthony.

Q. Was that your understanding when you signed the card?

* * *

A. Yes, Ray Anthony, he said that in order for us to get an election for the Union that we would have to get enough blue cards in, that is what he told me.[89]

At various stages of the instant hearings, counsel for the Respondent was warned by the undersigned that he was not to lead witnesses with respect to the magic words "just for an election." It was my expressed position that fraud in the inducement was an affirmative defense, beyond the scope of direct examination limited to authentication of cards by employee signers. Counsel was repeatedly cautioned that it was my impression, considering the entire circumstances, that such an examination was not calculated to elicit truth, but to impeach cards on the basis of trickery. Not the least of the reasoning underlying my conclusions in this regard is the likelihood that the leading of incumbent employees would produce responses favorable to company counsel, and would in all probability evoke subjective interpretation of what was said, rather than words actually used by the solicitor. Burney's testimony as a whole substantiates these misgivings. Testimony of employee witnesses attests to the generally held knowledge during the organizational campaign that J. P. Stevens would not voluntarily recognize the Union on the basis of a card check, but that if collective bargaining were to commence, an election would be necessary first, and a union victory second. Burney had three opportunities during his examination to express his version of what was said by the employee solicitor. In each of those instances, Burney specifically indicated

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[89] The gaps appearing in the above testimony involved the deletion of objections and rulings only. Otherwise the excerpt is a continuous reproduction of the exchange between counsel for the Respondent and Mr. Burney.

that the statements concerning the election were perfectly consistent with the designation appearing on the face of the card, and reflected an inducement which would only appeal to one willing to throw his support to the organizational effort. The result produced by Respondent's leading, was seemingly inconsistent with these perfectly legitimate expressions by the employee solicitor when in fact the witness' overall testimony as to what was said shows that it was not that at all. Here, as in other instances, the leading of card signers was not calculated to elicit what was said to Burney, but at best from Respondent's point of view, to elicit the witnesses' subjective understanding, or indeed, an argumentative response. I find that Burney's execution of this card was not improperly induced, and it shall be counted toward the Union's majority.

55. *John Henry Carr* (GC 355) was an incumbent employee of the Respondent at the time he testified. He asserts that he obtained a card at the mill, carried it home and asked his wife to complete and sign it for him. The sole basis for the challenge to his card is derived from the following colloquy between Carr and counsel for the Respondent:

Q. Can you remember what this person who gave you this card told you what it would be used for?

A. Yeh, I believe that he said that it would be used for a union, the Union coming in the plant.

Q. Did he tell you that it was for the Union to get an election?

A. I am sorry.

Q. Did he tell you that it would be used to get a union election?

A. Yes, he did.

Q. Did he tell you the sole purpose of the card was to get a union election?

A. Yes.

• • • •

Q. Did he tell you then that they had already signed up a majority of employees?

A. Yes, sir, they did.

Respondent not surprisingly omits this card from the many specifically challenged on the basis of an improper representation concerning the election. It is contested solely on grounds that a fraudulent misrepresentation was made as to the union's majority support. That issue is controlled by the following statement appearing in *N.L.R.B. v. Boyer Brothers, Inc.*, 448 F.2d 555 (C.A. 3), at page 562:

> Misrepresentation that a majority of employees had already signed authorization cards does not in every case require invalidation of a card signed in reliance thereon . . . such a misrepresentation is fatal only where it is a means of coercing the employee through fear of majority reprisal. [citations omitted]

First, although the Union may not have attained majority status in this large unit as of December 19, 1974, the date on which Carr executed his designation, Carr clearly did not act on such a claim.[90] Second, there is no suggestion whatever that the claim of majority was made against a background of prounion coercion. Accordingly, this card constituted a valid designation, and it shall be counted toward the Union's alleged majority.

56. *David Lee Carter* (GC 111) and 15. *Mary Smith Carter* (GC 113) are husband and wife. Both at the

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[90] Carr testified that he signed the card ". . . because I wanted a union if it would do what it would say that it would do."

time of the hearing were employed by J.P. Stevens. Mrs. Carter made the informational entries on both cards, whereupon she and her husband added their signatures. I discredit the testimony of the Carters that they signed cards on the representation that it would be used only for an election.[91] Mr. Carter had a limited capacity for recollection, and his testimony struck me as an argumentative attempt to serve his employer's interest in this proceeding. I discredit Mrs. Carter insofar as she confirms the testimony of her husband as to what was said by the union organizer. Her testimony that she did not read the card fits a customary pattern of unbelievable testimony.[92] Mrs. Carter testified that she changed her mind about the Union after the election, and it was my impression, that her attempt to repudiate her designation was in an attempt to implement this charge in attitude, perhaps, aided by ideas implanted through her attendance at the April 1977 meetings conducted by plant manager Shelton. The cards executed by the Carters were not shown by any credible evidence to have been improprly induced, and I find that they were valid designations, contributing to the Union's alleged majority in this case.

57. *Janet Cartwright* (GC 358) was actively employed by the Respondent at the time of the hearing. The sole basis for the challenge to her card was derived from her following exchange with counsel for the Respondent:

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[91] I am convinced that Mrs. Carter was in error in identifying Phillip Pope as the union organizer who visited her home and who allegedly made such a statement.

[92] In this connection Mrs. Carter testified that she obtained cards at the plant gate, carried them home, completed one for herself and one for her husband and that after they were signed, she placed them in the mail. It is her testimony that through this entire process, she did not read the card. Mr. Carter also is discredited insofar as he denied reading the card before signing.

Q. What did he say to you with regard to the union card?

A. We talked about 20 or 30 minutes and mostly he asked a lot of questions; a lot was said; I don't remember everything.

Q. All right. Was this the first time that he had been by to see you?

A. Yes, sir.

Q. Did he tell you that signing the card was only for the purpose for obtaining an election so that everybody could vote?

A. Yes, sir.

I am unwilling to accept Cartwright's response to this leading question as a credible indication that an improper representation concerning the election was made. The impropriety in that form of examination and my view that the responses thereto were unworthy of credence has been expressed heretofore. Respondent's claim that Cartwright's execution of this card was improperly induced was unsubstantiated by credible evidence, and it shall be counted toward the Union's majority in this case.[93]

58. *James M. Cavenaugh* (GC 184) was an incumbent employee at the time of the instant hearing. He testified that when he signed his card, he was told that it would be used "so they could have an election inside the plant." He further testified that he was not told that the

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[93] Cartwright indicated that she thought she read the card before signing. Her testimony that she signed the card as a gesture of courtesy to a union organizer who had spent his time discussing the issue with her, is merely reflective of her subjective state of mind, and does not constitute a basis for invalidating her card. See *Federal Alarm*, 230 NLRB No. 78, p. 9 (Marsteller). *N.L.R.B. v. WKRG-TV, Inc.*, 470 F.2d 1302, 1318 (C.A. 5, 1973).

card would be used for any other purpose. Although Cavanaugh testified that at the time of signing, he did not read the "fine" print on the card, he indicated that the union organizer told him that it was a "union card." Cavenaugh first admitted then denied that he had previously read cards which he had not signed. He acknowledged all handwriting on GC 184 as his own. It was dated January 28, 1975, almost 5 months after commencement of the campaign to secure signed authorization cards. Furthermore, the election had already been scheduled at that time, and it is not insignificant, that general manager Walker in giving a speech on that very date, expressed the view that it was probably common knowledge that the election would be held on February 19. I did not believe Cavenaugh's testimony that he did not read a card before signing, and in other respects his testimony furnishes no substantial basis for rejecting his card, it shall be counted toward the Union's majority.

59. *Hershal W. Cavenaugh* (GC 580) Cavenaugh was actively employed by the Respondent at the time of the hearing. He testified that he signed a card at the request of an employee organizer Bernice Jenkins. According to Cavenaugh, Jenkins asked him to sign on 2 or 3 different days, and on the third day, he read it and signed. Cavenaugh specifically expressed that Jenkins told him that ". . . after enough people signed them, they had to get enough signatures on the cards to have an election." While this statement was consistent with the clearly expressed designation appearing on the face of the card, in later portions of the examination, an attempt was made to alter the representation into something quite different. Thus, a colloquy between Cavenaugh and Respondent's counsel reflected the following:

Q. Did he say the only thing it would be used for would be to get an election?

A. Right.

For reasons heretofore expressed, I find that this prejudicial form of examination produced results unworthy of credence, and failed to substantiate any improper representation. I find that this card constituted a valid designation and it shall be counted toward the Union's alleged majority.[94]

60. *William C. Clark, Jr.* (GC 75) Clark at the time of the hearing was an active employee of Respondent. He testified that he signed the card at the request of an unidentified individual, who visited him at his home. He indicated that the solicitor told him that the purpose of the card was to get an election. He indicated that he was not told that the card would be used for any other purpose. On cross-examination, Clark admitted that at the time he signed, he knew that there had to be an election before the Union could come into the plant, and that the solicitor told him that if the Union were to get in, it would improve his working conditions, and that he was working for the Union and that he was trying to get people to sign cards to help get the Union in. Clark testified that he did not think that he had read the card before he signed it. It is noted that at the time Clark signed his card, the union election had already been scheduled. Paulhus testified credibly, without contradiction that all entries made on the card were in the handwriting of Clark. The latter afforded no explanation as to what had made him think that he had not signed the card. Clark attended the meeting addressed by his plant manager in April 1977, but seemed to have little recollection of what transpired on that occasion. To the extent that Clark

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[94] Although not necessary to the result, I also did not believe Cavenaugh's testimony that Jenkins, in his three efforts to obtain a signature, at no time talked to him about the Union, discussed benefits or working conditions.

denied reading the card he is discredited and as it is my conclusion that this card was executed without any proper inducement, it shall be counted toward the Union's alleged majority.

61. *Martha Cobia* (GC 114) was also an incumbent employee at the time that she testified. Cobia also indicated that she did not read the card that she signed.[95] She stated that the solicitor of the card told her ". . . he was going around trying to get enough people to get an election in J. P. Stevens." She goes on to indicate that he did not tell her that the card was for any other purpose. Cobia was an untrustworthy witness, who seemed too willing to respond at every turn in a fashion supporting Respondent's interest in this case. In many of these instances, her responses were implausible and did not have a ring of truth. I discredit her and find that she executed the card without improper inducement, and it shall count toward the Union's majority.

62. *Willie Coston* (GC 110) was employed by Respondent at the time he testified. Coston claims that he was visited at his home by an unidentified union representative who told him that the card would be used ". . . for an election." Coston on direct examination and in response to a leading question, indicated that the union representative did not tell him that the card would be used for any other purpose. He, as was true of so many other incumbent employees seeking to repudiate their cards, testified that he did not read it before signing.[96] Coston attended the April 1977 meetings presided over by his plant manager relative to this proceeding. On cross-examina-

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[95] Here again all handwriting on the card was admittedly that of Cobia.

[96] Union organizer Raymond Paulhus credibly, without contradiction, testified that except for the name of the Company, all entries on GC 110 were made by Coston.

tion, Coston admitted that he knew at the time that he signed that the Union could not come into the plant without an election, that he knew that the union representative who visited him worked for the Union and wanted to get the Union in the plant, and that that was the reason he wanted to get an election. I do not believe Coston's testimony that he did not read the card at the time he signed, and find that there was no improper representation made to him by any union representative. Accordingly, his card shall be counted toward the Union's majority in this case.

63. *Callie Cromartie* (GC 582) and 64. *Jesse Cromartie* (GC 583). Callie Cromartie was an incumbent employee of Respondent at the time she testified. She identified her own card and the card of her father, Jesse. Miss Cromartie relates that she completed and signed a card on behalf of her father at his request.[97] Cromartie claims that she obtained the card from an unidentified union organizer, but she could not recall what he said concerning an election. Cromartie claims that she told her father that the card was going to be used to get an election. The testimony of Cromartie does not substantiate that any union official, agent, or solicitor, ever made a representation cancelling the clear expression on the face of the card, which Cromartie admittedly "glanced over." The record does not substantiate that Jesse Cromartie, before authorizing his daughter to complete a card on his behalf, did not have occasion to read such card. Accordingly, both cards are deemed validly executed, and shall be counted towards the Union's alleged majority.

65. *Nellie P. Davis* (GC 37) was an incumbent employee when she testified. She could not recall all that was said by the union organizer at the time she signed the card, but did specifically assert that he told her that

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[97] Jesse Cromartie was not called. His name appears on Respondent 15(a), a current payroll listing.

". . . if they got enough signed that it would be to get an election." Accepting Davis' testimony in this regard, such a comment is not inconsistent with the expressed designation on the face of the card and constitutes no valid ground for rejecting it. Her card shall be counted toward the Union's alleged majority in this case.

66. *Betty English* (GC 376) was an incumbent employee at the time of her testimony. She related that she signed and completed a card but did not date it. In this latter respect she clarified that the date was on the card at the time she received it, and that it was executed prior to the election.[98] She further testified that union organizer Brenda Williams told her "that she had several union cards and she wanted to see how many union cards she could get signed up and get the election." Notwithstanding an attempt by Respondent's counsel to distort this into an improper election representation, I conclude that this was all that was said concerning the election within the recollection of English. English admittedly read part of the card.[99] I find that the card executed by English was a valid designation and it shall be counted toward the Union's majority in this proceeding.

67. *Herbert C. Forbes* (GC 88) was an incumbent employee at the time he testified. He claims that he received several visits from union representatives, who concerning the purpose of the card, indicated that ". . . they had to have a certain percentage of numbers of peo-

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[98] I reject Respondent's contention that this card should be rejected because unauthenticated as to date. It clearly was executed before the critical date for assessing the Union's majority in this proceeding.

[99] Respondent's counsel made a challenge to this aspect of English's testimony by confronting her with the pretrial affidavit in which she indicated that she had not read the card. It was not my impression that either she or any other incumbent employees called to verify their cards engaged in a violation of the oath in order to support the Union's interest in this regard.

ple to sign before they could have an election." Forbes went on to testify that this was the extent of their remarks concerning the card's purpose. Forbes did not absolutely deny reading the card, but his version was "I glanced at it . . . didn't really read it . . . couldn't really tell you what was on it." In addition Forbes admits to possessing 3 or 4 union cards before the visits by a union representative, but denied reading any of them. Also noteworthy is the fact that all entries on the card signed by Forbes are in his handwriting.[100] Forbes attended the meetings in April 1977 by his plant manager, which pertained to the card issue in this proceeding. I did not believe testimony by Forbes that he had not read the clear designation on the cards before he signed, and conclude that no improper representation was made in the execution of his card; it amounted to a valid designation of the Union.

68. *Evelyn Estelle Gore* (GC 71) The signature on this exhibit was initially authenticated by union organizer Raymond Paulhus. Gore at the time of her testimony was actively employed by the Respondent. Gore admitted to attending the speech that was given by the plant managers in April 1977 pertaining to the Union's effort to come into the plant and this proceeding. In the prepared speech read at those meetings, the following appears:

> In the upcoming legal proceeding, those employees who signed cards prior to the last election will be called into court to testify about their signature. Unless an employee can prove that he/she was misled or deceived into signing the card, or fraud was involved or the card was not signed by the employee, the Labor Board will count the card for the Union.

Gore, when given an opportunity to authenticate Exhibit GC 71, denied that it contained her signature. However,

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[100] Based on the credited uncontradicted testimony of union organizer Paulhus.

samples, acknowledged to be penned in her hand, are in evidence as General Counsel Exhibit 627(a) and (b). Comparison reflects that the signature appearing on the card is almost an exact replica of those appearing on the samples.[101] I did not believe Gore and discredit the entirety of her testimony which is inconsistent with the designation expressed on the face thereof. It was a valid designation, which shall be counted toward the Union's majority. Although one cannot be entirely certain as to the origin of her incredible testimony, it is entirely possible that the radiating effects of the April 1977 meetings were far more effective than even the Respondent contemplated.

69. *Luther Gore* (GC 481) was an incumbent employee at the time he testified. He relates that fellow employee Willie Brice gave him a card, advising that ". . . he wanted to help get an election started." Through a leading question by Respondent's counsel, Gore indicated that Brice did not inform him that the card had any other purpose. Gore acknowledged that he read the card. Under controlling precedent, the statement imputed to the employee solicitor did not constitute a substantial ground for invalidating the card, and it shall be counted towards the Union's majority in this proceeding. *J.P. Stevens Co., Inc., Gullistan Division v. N.L.R.B.*, 441 F.2d 514, 524, fn. 14 (C.A. 5, 1971).

Ruth W. Graham (GC 389) at the time of the instant hearing was actively employed by the Respondent. Graham testified that she was told by an unidentified individual that, with respect to the purpose of the card, ". . . they needed a certain amount of people to sign the card, you know, inside the plant so that they could come in and have an election; and other than that they wouldn't allow them inside the plant." When she claimed to have asked

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[101] The Gore incident is the only example of an attempt by any witness to renounce a designation on the basis of an alleged forgery where handwriting samples reflected no perceptible differences.

if it would count as a vote for the Union, they said "no, that we would have to have the election." Graham admittedly read the card. Unlike many other active employees who impressed me as bent on affording pattern testimony to repudiate their card, I consider Graham to have been a credible witness. I believe her testimony that one of the employees distributing cards responded to her specific inquiry by using words to the effect that execution of the card was not synonymous with a binding vote for the Union. This, in my opinion, amounted to the type of cancellation of the designation on the face of the card, which constitutes a material misrepresentation. I find that the card of Ruth W. Graham did not constitute a designation of the Union and it shall not be counted.

70. *Hazel M. Griffin* (GC 235) at the time she testified was an active employee of the Respondent. She testified that she signed the card at the request of Phillip Pope who read the card to her. A summary of her testimony reflects that she was told about the benefits of having a union, and that it would improve working conditions and get better wages for employees. Pope indicated that he wanted an election in order to get the Union in the plant, and that he only lacked a few cards of getting inside the plant to have an election, to vote the Union in or out. There is no evidence that Pope in reading the card to Griffin departed from the precise terms thereof. From a fair reading of her testimony, it is concluded that she signed her card under no representation inconsistent with the clear designation appearing thereon. Her card shall be counted toward the Union's majority.

Jerry Wayne Gurgainous (GC 384) was an incumbent employee at the time he testified. He could not recall when he obtained his card, but indicated that a union representative came to his house, before he signed, and informed him that the card ". . . was just to see how many people would like to have an election . . ." Gurgainous admitted that the union representative also told

him that if the Union got in the employees would probably get better benefits. The testimony as to the representation made to Gurgainous was not adduced under a form of examination likely to provoke an unreliable response and Gurgainous impressed me as a reliable witness.

Although the issue is not free from doubt, it is concluded that the representation made to him on signing the card was sufficiently inconsistent with the expressed designation of the authorization card to warrant its invalidation. Accordingly, that card shall not be counted toward the Union's majority in this case.

71. *Martha Janet Herring* (GC 154) was an incumbent employee of the Respondent at the time she afforded testimony. Before signing, she read and understood the card. However, she testified that union organizer Louis Washington told her that the card's purpose was as follows, "if there were so many cards, we would hold an election to see for the Union to get in." Although Herring testified, in response to the leading question by Respondent's counsel, that Washington indicated that the card was "just for an election," I find that this aspect of her testimony was unreliable as either a conclusion, impression, or deduction, rather than an expression fairly attributable to the union organizer. I find that nothing was said by the union organizer inconsistent with the express designation of the Union appearing on the face of the card, and shall count it toward the Union's alleged majority in the instant case.

Samuel M. Howard (72) was an incumbent employee at the time he testified. He relates that he did not read the card before signing it, and that he was told by a union organizer that a certain percentage of the cards would have to be signed in order to have an election. He also testified that the organizer indicated that the Union would get employees higher wages and benefits. Howard avowed that he knew that the card was a union card when he signed it, and that the union organizer informed him that

he worked for the Union. Howard admits that all writing on the card was his. It was the sense of his testimony, that while he was antiunion and knew that the union organizer wanted to see the Union in the plant, he took the union organizer at his word, and completed the card without reading it. Howard was an unreliable witness and I discredit him to the extent that he seeks to repudiate his card. It shall be counted as a valid designation of the Union.

73. *Geraldine Johnson* (GC 221) was an incumbent employee at the time she testified. On direct examination, she testified that the purpose of the card was "just to get an election." On cross, explaining what was actually said concerning the election, she indicated that union organizer Washington, advised that "they had to have a certain percentage to sign the cards before they could get the election." She admittedly read the card. It was my impression that the testimony of Johnson concerning the election on direct, was more in the nature of her own interpretation of what was said, rather than the words used, and I find that it furnishes no substantial basis for concluding that the card, which Johnson admittedly read, was executed on representations inconsistent with the clear designation on the face thereof. I find that it constitutes a valid designation of the Union.

74. *Sara Lee Johnson* (GC 705) was also employed by the Respondent at the time of the hearing. She obtained her card from a fellow employee, and all entries thereon are in her handwriting. She read the card, and indicates that she was told that it was to get an election in the plant. Johnson admittedly knew that there would be no union representation at the J.P. Stevens plants in Wallace without an election. This knowledge, no doubt shared by substantially all of her fellow workers, appears to have been exploited considerably at this hearing through the efforts of Respondent's counsel to capitalize upon slender reeds of memory in combating the Union's alleged

majority. This objective was often pursued through leading questions, similar to the line of examination on which the challenge to the card of Johnson is predicated, as set forth below:

Q. Did that individual tell you what this card would be used for?

A. I read it. They said it was to get an election in the plant.

Q. The employee who gave it to you told you that it was for an election?

A. Yes, we discussed it.

Q. Did he tell you that it would be used for anything else?

A. Nothing but an election.

Q. That it would be used just for an election?

A. Yes.

Q. Was it your understanding when you signed this card that the only thing it would be used for would be to get an election?

A. Yes.

Obviously an innocent representation, through the leading nature of the examination, was converted into *prima facie* grounds for rejecting Johnson's card. Her testimony is rejected insofar as it suggests that union representatives cancelled the clear designation on the face of the card to induce Johnson to sign. As indicated, the commonly held fact that the Union would not be recognized until it won an election, together with the fact that a percentage of cards was necessary to the conduct of an election, provided a background highly vulnerable to manipulative production of unreliable evidence. As in other instances, the claim that Johnson's card was obtained through a material misrepresentation is not sub-

stantiated by credible proof. Her card shall be counted toward the Union's majority in this case.

75. *Gracie Lee Jones* (GC 156) was actively employed at the time she testified. The challenge to her card stems essentially from the following questions put to her by Respondent's counsel:

Q. Did he tell you what the cards purpose was?

A. To get an election.

Q. Did he say it would be used for any other purpose?

A. No.

Q. Pardon?

A. No.

Q. Did you read the card?

A. No.

Q. Did you rely on what he told you in signing the card?

A. That's right.

Aside from the leading nature of this examination, it is noted that Jones attended the speech conducted by the plant managers in April 1977 relative to this proceeding. Jones admitted that when she signed the card, she knew that the election was only about 2 weeks off. The card was dated February 4, 1975, and it is entirely likely that it was executed after General Manager Walker's January 28, 1975 speech, in which he acknowledged the well known fact that the election had been scheduled at that time. Jones further testified that she had 4 or 5 cards prior to executing that which is in evidence, but claims that she read none of them. Jones was an unreliable witness, who impressed me as one engaged in an argumentative and untruthful effort to repudiate her valid designation of the Union. I discredit her testimony, and find

that the card she executed should be counted toward the Union's majority in this case.

76. *Jimmy M. Jones* (GC 321) was an incumbent employee when he testified. He attended the speech given by his plant manager in April 1977. He asserts that, prior to signing, he was told that the Union needed a few more signatures in order to get inside the plant to hold an election. When queried as to whether he had read the card his response was as follows: "I think I did. I'm not sure now." His testimony shows little more than that the card would be used for an election, a respresentation not inconsistent with the clear designation on the face of the card. Accordingly, I find that the card executed by Jones constituted a valid designation, which shall be counted toward the Union's alleged majority in this proceeding.

77. *Wayne M. Keene* (GC 424) was an incumbent employee at the time he testified. He admits signing the card, which bears his handwriting, at the behest of union organizer Phillip Pope. He admits that Pope read him the card, but indicates that the latter informed him that it would be used ". . . too, by the number of people that signed these cards would be used to get an election." He denies that he was told that the card would be used for any other purpose.[102] On the face of Keene's testimony, the representation concerning the election to which he attests is not consistent with the clear designation on the face of the card. It shall be counted toward the Union's majority in this case.

78. *Betty T. Kennedy* (GC 117) was an incumbent employee at the time she testified. She admittedly attended a speech given by plant manager Shelton in April 1977.

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[102] Keene indicates that he made an effort to get his card back by letter to Pope, dated April 15, 1977. It is not insignificant that this letter corresponds with the time frame in which plant managers Wellons and Shelton conducted meetings pertaining to this proceeding.

She claims that, on executing her card, she was informed that "if they had enough people to sign the cards it would give them the right to have an election." She asserts that she was not told that the card would be used for any other purpose. She could not remember whether or not she had read the card.[103] As there is no convincing evidence that Kennedy did not read the card before signing it, and as the statement concerning an election imputed to the union organizer is not inconsistent with the designation appearing on the face thereof, I find that the effort to invalidate this card is unsubstantiated, and it shall be counted toward the Union's majority in this case.

79. *Albert Earl King* (GC 335) did not testify, though his name appears on the current list of employees on the payroll at the Carter plant. See Respondent 15(b). Nonetheless, King's card was authenticated by incumbent employee Glen Pigford. Pigford testified that he gave a card to King, who completed it in his presence. He relates that he informed King that ". . . if we got enough we would have a vote and get an election to get the Union." This statement, in my opinion, does not cancel the clear designation on the face of the card, and the card executed by King shall be counted toward the Union's majority in this case.

80. *Norwood Henry King, Jr.* (GC 157) was an incumbent employee at the time he testified. He admittedly signed a card at the request of union organizer Louis Washington. King admittedly did not pay attention to everything that was said by Washington, but he testified that Washington told him "the card would determine whether we would have an election." King went on to relate that Washington did not tell him that the card would be used for any other purpose. Though the card is

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[103] Based on the credited testimony of Phillip Pope, which is uncontradicted, I find that all entries, except the name of the Company, are in the handwriting of Kennedy.

dated January 23, 1975, like so many other incumbent employees who testified, King denied that he ever read the card. On cross-examination, King admitted that Washington informed him that the Union would bring about better working conditions. I did not believe King's testimony that he did not read the card, and accordingly find that the representation made by Washington was not inconsistent with the clear designation expressed on its face; it shall be counted toward the Union's alleged majority in this case.

81. *Edward Kornegay* (GC 201) and 82. *Sara K. Kornegay* (GC 200) are husband and wife. Both were actively employed by Respondent at the time they testified. They signed cards at the behest of union organizer Michael Black. Mrs. Kornegay attended the speech given by her plant manager in April 1977. Both testified that they never read a card before signing it. However Mrs. Kornegay, when examined as to how she could recall not reading the card, then indicated that she could not remember whether she had or not. Mr. Kornegay admittedly had a card in his possession prior to the one he signed, but indicates that he did not read that one either. Both indicate that the union representative asked them to sign the card, advising that it would be used for an election. Mr. Kornegay testified that the union organizer used the magic words, "just . . . for an election." Mrs. Kornegay indicates that the union organizer said "if they had enough signed, it would determine whether they would have an election in the company or not." She admits, that during his visit, he discussed the advantages of representation by a union. It was my impression that the Kornegays afforded tailored testimony in a conscious effort to repudiate perfectly valid designations. I discredit them insofar as they impute improper statements to the union organizer, and their cards support the Union's alleged majority in this case.

83. *Henry F. Lee* (GC 85) was an incumbent employee at the time he testified. Upon execution of the

card, he claimed to have been told that the card would be used "to get an election so they could get a union." [106] Lee indicates that he does not think that he read the card before signing it. Lee was an unimpressive witness. While on the stand, he impressed me as laboring under pressures. His plain difficulty in recalling what transpired was punctuated with a clear recollection of matters supporting his conscious effort to repudiate his designation. I find that the challenge to his card is not supported by credible substantial evidence, and it shall be counted toward the Union's majority.

84. *James Daniel McEachin* (GC 752) testified that he obtained his card from another employee, signing it after exchanging "a few words." The employee solicitor asked him if he wanted a card, and without mentioning an election, indicated "it would be used for voting purposes." [107] In my opinion, this scant testimony is too ambiguous to reflect a representation inconsistent with the clear designation on the face of the card. McEachin's card shall be counted toward the Union's alleged majority in this case.

85. *Thomas Madigan* (GC 332) admittedly signed a card at the request of fellow employee Wayne Lanier. He indicates, that he read the card, and that Lanier told him that ". . . the Union had to have a certain percentage of the cards signed by people that worked there to get in and have an election, to get the Union in and have an election." In the circumstances, this statement on the part of the employee organizer is not a cancellation of the clear designation on the face of the card, and it shall be counted toward the Union's alleged majority in this proceeding.

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[106] Lee also indicates that unidentified individuals who were passing out cards in the plant told him the purpose of the card was "just to get an election. . . ."

[107] There is no indication as to whether or not McEachin read the card, but he entered all information thereon.

86. *Iris Jean Mathis* (GC 304) was an incumbent employee at the time she testified. During the election, she acted as a union observer. She testified that she and another employee, Carol Whaley, whose card is also in dispute in this proceeding, obtained cards from Bernice Jenkins, who indicated that the card ". . . was to get an election started; he said that we would have better benefits and working conditions." Mathis is among the minority of incumbent employees willing to admit that they read the card. The evidence does not substantiate Respondent's challenge, and I find that the Mathis card constitutes a valid designation of the Union.

87. *David L. Messick* (GC 369) was an incumbent employee at the time he testified. He testified that he obtained a card at the gate, took it home, and after 1 or 2 days, completed it. Although Messick testified that after execution of the card, he was visited by union organizer Louis Washington, who discussed the election with him, on the face of his testimony, it appears that he effectuated his designation prior to any such conversation. His card constitutes a valid designation and shall be counted toward the Union's majority.

88. *Herman D. Miller* (GC 64) was an incumbent employee at the time he testified. He signed the card at the request of a union organizer who visited his home. He asserts that the union organizer at the time discussed the advantages of union representation, and went on to explain that they had to have so many cards signed before they could have an election. Miller admittedly read the card. I find that this representation is not inconsistent with the clear designation on the face of the card and that it constitutes a valid designation of the Union for purposes of this proceeding.

89. *Carolyn Moore* (GC 204) was an incumbent employee, but on leave, at the time she testified. She relates that she signed the card at the behest of union organizer

Michael Black, who told her that the card was "for the election." And while indicating that he did not tell her that the card was for any other purpose, on cross-examination she admits that he discussed the benefits of having a union in the plant before she signed. Moore admittedly read the card before signing it. I find that she did so, without laboring under any improper inducement, and that her card constitutes a valid designation of the Union.

90. *Martha C. Moore* (80) was an incumbent employee at the time she testified. She indicates that she signed at the request of a union organizer, who visited her home. She testified that the union organizer told her that "the only reason he wanted us to sign was to get enough signed so that they could have an election," and that when she asked him, he indicated that employees could not retrieve their cards, since it would never be held against them because it was just to get an election. On cross-examination, Moore admits that the union organizer discussed his view that designation of the Union would mean better working conditions. Although on direct examination she suggested that she didn't read the "little writing down there" on the card, on cross-examination, when confronted with the fact that she had completed the card in its entirety, she admitted that she had read the card. Moore admitted that she attended the meetings conducted by her plant managers in April 1977, the subject matter of which included the card issue in this proceeding. Carolyn Moore was not an impressive witness. Her testimony concerning the representations made at the time of signing is deemed too unreliable to warrant credence. I find that the challenge to this card is unsubstantiated by believable testimony, and shall count it toward the Union's alleged majority in this case.

91. *Melvin C. Naylor* (GC 218) and 92. *Brenda C. Naylor* (GC 219). The Naylors were actively employed at the time they afforded testimony in this proceeding. They claimed to have signed cards when two union or-

ganizers visited their home. They claimed that they were told that the purpose of the card was "just to have an election." They denied reading the card, though the union campaign had been in progress some 4½ months at the time they signed. While admitting that the union representatives were at their home for about 45 minutes, they deny that there was any discussion of union benefits or the advantages of union representation. It seemed too convenient that the Naylors could recall little more from the visit by union representatives than the "just for an election" representation. Their explanation that they were hurriedly getting read for work at the time struck me as argumentative and false. Mr. Naylor could only state that he believed that he attended the speech given by Wellons in April 1977, pertaining in part, to this proceeding. The Naylors did not strike me as truthful witnesses, and I discredit their testimony as to the circumstances under which they signed cards. The cards executed by both shall be counted as valid designations of the Union for purposes of the proceeding.

93. *Kalton Ray Newkirk* (GC 241) was an incumbent employee at the time he testified. He acknowledged that he signed a card at the request of Phillip Pope who visited his home. At the time he signed, he claims that Pope told him that its purpose was to allow an election, if enough people signed. He denied that Pope told him that the card would be used for any other purpose. He also denied that he ever read one of the blue cards before signing.[108] On cross-examination, Newkirk admitted that Pope discussed the advantages of union representation, indicating that it would result in improved working conditions. Newkirk attended the meeting conducted by his plant manager in April 1977, which reflected upon the issues in this proceeding. His card was dated January 27, 1975, and at a time when the preelection hearing, which Pope had at-

[108] All entries on the card are admittedly in Newkirk's handwriting.

tended, had closed, and when considering General Manager Walker's speech of the next day, it is fair to assume that the election had been scheduled. I do not believe Newkirk's testimony, that under such circumstances, Pope would have obtained a signature under the conditions attested by Newkirk. His insistence that he knew he did not read a card fits a pattern of incredible testimony offered by incumbent employees, seeking to repudiate their cards. I find that the claim that this card was obtained on the basis of an improper representation concerning the election is unsubstantiated by credible evidence, and it shall be counted toward the Union's majority in this proceeding.

94. *Donald Ray Parker* (GC 485), at the time he testified, was an active employee of the Respondent. During the campaign, he admittedly authorized his wife to complete and sign a card in his behalf. He claims that he received a card from a fellow employee who told him that they had to have so many cards signed in order to have an election to see if the employees wanted a union.[109] Parker denied reading the card before signing. I did not believe Parker's testimony that he did not read the card before signing, and I find that the evidence does not substantiate that an improper representation, sufficient to invalidate the card, was made to him.[110] I find that the card executed by Parker constituted a valid designation of the Union and it shall be counted toward the Union's alleged majority in this case.

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[109] Parker admits that the employee solicitor did not use the magic words solely for an election or just for an election, but that he interpreted the words of the employee solicitor as meaning the same thing.

[110] As matters turned out, Donald Parker did engage in activities on behalf of the Union during the instant campaign. He admits to having engaged in leafletting, and his name appears on a letter authorizing the use of his name by the Union for purposes of organizing the Wallace employees. See Petitioner Exhibit 8.

95. *Terry G. Parker* (GC 183) was an active employee at the time he testified. According to Parker, he received an authorization card from a fellow employee who informed him that ". . . an election could be cast at J.P. Stevens if enough cards were signed." He claims that he was told that the card had no other purpose. Parker could not remember whether or not he read the card. All entries on the card bear the handwriting of Parker. It is dated February 7, 1975, about 10 days after General Manager Walker gave his speech, acknowledging the probability that employees were aware that the union election had been scheduled. Although I find that the testimony of Parker does not lay a substantial foundation for rejection of his card, I would note, that his testimony fits a pattern of unbelievable testimony offered by employees in an effort to repudiate valid designations in this proceeding. He admits to having attended the speech afforded in April 1977 by his plant manager, which pertained to issues in this proceeding. His card constitutes a valid designation and it shall be counted.

96. *Roland Pendergrass* (GC 486) was actively employed at the time he testified. He admits that he made all entries on the card in question, that he obtained it at the plant gate, retained it in his possession for a couple of days before completing it, but denies that he ever read it. The challenge to his card is based upon a conversation with a fellow employee by the name of Gary Kennedy. He claims that Kennedy told him that the card was to bring an election in the plant so that employees would have a right to decide for themselves whether they wanted a union or not. As it is not shown on this record that Gary Kennedy engaged in card solicitation, or any other activity on behalf of the Union, apart from the possibility that he signed a card,[111] this statement amounts to no more

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[111] The only Gary Kennedy identified in this hearing is Gary Allen Kennedy, who executed an authorization card on behalf of the Union on December 2, 1974. His signature to that card does

than "scuttlebut." The card of Pendergrass shall be counted as a valid designation of the Union for purposes in this proceeding.

97. *Evett Pickett* (GC 488) was an incumbent employee at the time she testified, who indicated that she obtained the card from an unidentified employee, who indicated that the card would be used to get an election. She asserts that she read the card, and understood its terms before signing. The foregoing evidences no improper inducement, and her card constituted a valid designation. It shall be counted toward the Union's majority in this case.

98. *Grace Delois Pickett* (GC 176) was an incumbent employee on leave of absence at the time she testified. She could recall executing a card at the request of a union organizer who visited her home, but could remember little that was said, other than that ". . . he wanted to get enough cards signed to get an election." Pickett admits that she read a card at "sometime." I find that this card was not signed on the basis of a representation inconsistent with the clear designation on the face thereof, and it shall be counted toward the Union's majority in this proceeding.

99. *James C. Pickett* (GC 177) at the time he testified was an incumbent employee of the Respondent. He assertedly was visited by a union organizer, who indicated that ". . . he wanted people to sign these cards because he wanted to have an election in the mill, that's what he said." He denied ever reading a card. I discredit his testimony in this latter respect,[112] and find that no repre-

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not make him an agent or representative whose statements concerning the organization campaign would be any more binding upon the Union than those of an antiunion employee. See e.g., *The Stride Rite Corp.*, 228 NLRB No. 22, JD p. 27 (Ackerley).

[112] Particularly unconvincing was Pickett's testimony that he signed the card because he was tired of being around "it" though he

sentation inconsistent with the clear message on the face of the card was made to Pickett. His designation shall be counted toward the Union's majority in this proceeding.

100. *Carl D. Pierce* (GC 266) was an incumbent employee at the time he testified. According to Pierce, he was visited at his home by Phillip Pope, who told him that he worked for the Union, that he had union cards that he was trying to get employees to sign, and that he had to have so many cards signed before they could have an election in the plant. He denied ever reading a card, though he admitted having several in his possession before the Pope visit. He claims that Pope did not mention the advantages of union representation, until after he signed a card. I was not impressed with the testimony of Pierce. Coincidentally, his account fits a familiar pattern of employees who attempted, by false testimony, to repudiate their designations of the Union. It is not insignificant, that Pierce also attended meetings conducted by his plant manager in April 1977. Though a reference to this proceeding was admittedly included in the speeches delivered at those meetings, Pierce could not recall that anything was said concerning the card issue in this proceeding in the course of those meetings. The assertion that the card of Pierce was obtained on the basis of any improper inducement is unsubstantiated by credible testimony. It is deemed a valid designation and shall be counted toward the Union's alleged majority in this proceeding.

101. *Eleanor Pierce* (GC 129), at the time she testified, had been continuously employed by Respondent for some 25 years. She testified that prior to signing a card, she was visited by union representatives on 3 or 4 occasions,

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really didn't want "it," and that he did not want an election, but signed so that the union organizer could have one. It is the sense of Pickett's testimony that he signed a card obtained at the plant gate, a fact which mitigates the possibility that he was subject to any form of harassment or browbeating as his testimony seemed to suggest.

but that each time, she told them she had already signed a card. She claimed that their last visit took place at a time when she had guests for dinner. She testified that on this occasion the organizers told her that they had no record of her having signed, and asked her to sign another card. She claims that she did so to avoid having herself made out to be a liar. She asserts that each time the union organizers visited her, they told her they had to have a certain amount of cards signed before they could get an election. Pierce denied ever reading a card before signing, though she had picked up cards at the gate previously. It is noted that with the exception of the name of the Company, all entries appearing on GC 129 are in Pierce's handwriting. The testimony of Pierce impressed me as a contrived effort to repudiate an otherwise valid designation. She is discredited, and her card shall be counted toward the Union's majority in this proceeding.

102. *Joyce D. Pierce* (GC 491) was an incumbent employee at the time she testified. All the handwriting on GC 491 is hers. She admittedly signed at the behest of union organizer Loraine Burnett, who visited her home, and asked her to sign a card. She indicates that Burnett told her that the card is to "help us have an election and nobody won't know you signed it, and the Union could get her more money if she signed the card." The statements imputed to Burnett are not inconsistent with the clear unambiguous designation on the face of the card, and I find that the card of Joyce Pierce constitutes a valid designation, which contributes to the Union's majority in this proceeding.

103. *William P. Pierce, Jr.* (GC 213) was an incumbent employee at the time he testified. He related that an unidentified union organizer visited his home and requested that he sign a card, telling him that "it would be used strictly for election purposes." Pierce claims that he did not read the card before signing it. When asked whether the organizer explained what they meant by

"strictly for an election," Pierce on cross-examination indicated that they said "they were getting 51 percent of the people to sign cards so they could have an election or see if they wanted the Union in." Pierce could not recall whether during this 10 or 15 minute conversation, the union organizer mentioned the advantages of having a union in the plant. Pierce knew that it was a union card that he signed, and also admits that he picked up a card attached to a pamphlet at the plant gate, but denied reading it, claiming that he threw it into the trash as soon as he got home. Pierce admits that all entries on the card, except for the date, are in his handwriting. He claimed that he did not know he was helping the union by signing a card. Pierce impressed me as engaged in a conscious effort to repudiate his card and, like other incumbent employees who testified in this proceeding, seemed willing to take advantage of a lack of recollection by substituting argumentation which would lead to such a conclusion.[113] I find that the challenge to this card is based upon incredible testimony and shall count it toward the Union's majority in this proceeding.

104. *Carolyn Potts* (GC 161) was an incumbent employee at the time she testified. She claims that she was visited at her home by union organizer Louis Washington who told her that the purpose of the card was "to get an election." Potts denied that Washington told her that the card was for any other purpose. Potts admitted that, though she did not read the card, Washington read it to her, and that it said nothing about an election. She also admitted that Washington mentioned that union representation would lead to a "possibility" of higher pay, better working conditions and better insurance. Upon consideration of her testimony, I find that it does not substantiate the existence of any improper representation altering the clear meaning on the face of the card and that it constituted a valid designation of the Union.

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[113] It is noted that Pierce attended the April 1977 meeting in which issues pertaining to this proceeding were discussed.

105. *Thomas Henry Pratt* (GC 497) was an incumbent employee, who testified that he picked up a card at the plant gate, and completed it. The card is dated September 23, 1974. There is no evidence that any improper representation was made to obtain his signature, and his card constitutes a valid designation of the Union, which shall be counted towards the Union's alleged majority in this proceeding.[114]

106. *Tyrone L. Robinson* (GC 504) was an incumbent employee at the time he testified. He indicates that he obtained a card from an unidentified individual, who told him that he had to "get so many to sign cards to see whether we can have an election, to see who wanted the Union." That individual did not indicate that the card would be used for anything else. Robinson read the card, and as I find that no improper representation was made, it constitutes a valid designation of the Union which shall be counted towards the alleged majority in this case.

107. *David E. Rogers* (GC 260) and 108. *Fay H. Rogers* (GC 261) are husband and wife. At the time they testified, only Mr. Rogers was still in the Company's employ. Both acknowledged that they signed cards when union organizer Phillip Pope visited their home. Mrs. Rogers indicates that Pope explained that the card was "for an election," and that he did not explain that it would be used for any other purpose. Mrs. Rogers acknowledges that Pope did discuss the advantages of having

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[114] Counsel for the Respondent seeks to highlight certain testimony by Pratt that at a union meeting he attended in October 1974, union organizer Phillip Pope indicated that the sole purpose of the card was to determine whether or not the Union would get an election. There is no question in my mind that Pratt was an objective witness. However, the line between an improper and perfectly permissible representation touching upon the matter of an election is often faint and one which a lack of memory may blur. It was my impression that Pratt had no clear recollection of the precise words used at the union meetings, and further I do not believe that Pope in so many words used the language attributed to him by Pratt.

a Union in the plant. Both denied ever reading a card, although Mr. Rogers indicated that he had picked one up at the gate and brought it home previously, asking his wife if she wanted to read it. On their testimony, I do believe that Pope might have made some reference to an election, but I do not accept their testimony insofar as they impute to Pope a statement inconsistent with the clear designation on the face of the card. Neither was considered trustworthy. Particularly unbelievable, was their testimony that they had not read a card before signing, which once again echoed the familiar incredible ring of an excessive effort on the part of employees to repudiate valid designations.[115] I find that no credible evidence has been offered supporting a substantial challenge to the validity of these designations, and they shall be counted toward the Union's majority in this case.

109. *Angela Faye Rouse* (GC 291) was an active employee at the time she testified. In affording her testimony, she manifested difficulty in recalling the events surrounding her signing. Her description of what was said to her concerning the purpose of the card she signed varies from statements to the effect that they would be used to see if enough people were interested in the Union to hold an election, to the simple explanation that the card was to be used "to hold an election." Rouse admittedly had read a card before signing it. A fair assessment of her testimony does not reveal that any representation was made to her, varying the clear designation on the face of the card, and I find that it constitutes a valid designation which shall be counted toward the Union's alleged majority in this proceeding.[116]

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[115] Mr. Rogers admittedly attended a meeting presided over by his plant manager in April 1977 in which this hearing was discussed.

[116] Rouse attended the April 1977 group meetings and speech presided over by the plant manager in connection with this hearing. Although having nothing to do with the validity of her

110. *Anthony Jerome Sholar* (GC 509) was an incumbent employee at the time he testified. A fair assessment of his testimony limits the challenge to his card to a statement attributed to employee Bernice Jenkins that its purpose was to see if there was enough interest in the Union to have an election. Sholar admittedly read the card. In my opinion his testimony, fairly construed, does not reflect an improper inducement, and it shall be counted toward the Union's majority.

111. *Timothy J. Sholar* (GC 207) At the time of the hearing, Sholar had been continuously employed by the Respondent for about 20 years. He testified that he signed a card at his home at the request of union organizer Mike Black. Black allegedly advised him that the purpose of the card was to "see whether or not we would have an election." Sholar, in response to a familiar leading question, indicated that he was not informed that the card was for any other purpose. This despite the fact, that on cross-examination, Sholar admitted that Black discussed the advantages of union representation, including better working conditions and more pay. Although Sholar admitted that he knew the card was a union card and that he possessed one that he obtained previously at the plant gate, he denied reading that or any other card before signing. Sholar attended the April 1976 [sic] speech given by Plant Manager Wellons. I did not believe that with the union campaign in progress for some 4 months he did not read a card before signing, and I mistrusted his capacity

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designation, it is noteworthy, that her testimony concerning the events at that meeting, has the same evasive character of several other witnesses. She, as other witnesses whose testimony has been discredited, testified that plant manager Shelton simply told them that ". . . that there is going to be a hearing down here and if we were called, to come and tell the truth." It is clear from the prepared speech delivered by Shelton and Wellons that they said far more. It is a striking coincidence that few employees could recall the drift of that speech insofar as it related to this proceeding.

to recall, in a manner affording a fair and accurate accounting, the precise words expressed to him by any union representative or agent prior to his execution of the card. It is considered a valid designation and shall be counted toward the Union's alleged majority in this proceeding.

112. *Donnie Mae Smith* (GC 96) was an incumbent employee at the time she testified. She signed a card at the request of Phillip Pope. According to Smith, Pope told her that the purpose of the card was "just for an election." She further testified that when Pope asked her to read the card, she did so, and that before she signed, he discussed the benefits that employees would realize through union representation. I was not convinced that her testimony concerning the "just for an election" representation was an accurate rendition of Pope's words on that occasion. While possibly her interpretation of what was said, her testimony seemed "too pat," and might well have been inspired by matters contained in the prepared speech given by the plant managers in April 1977 as to the circumstances under which the Board would decline to count cards as union designations. I find that there is no credible testimony supporting the challenge to this card, and shall count it toward the Union's alleged majority in this proceeding.

113. *Ervin R. Smith* (GC 512): This exhibit was authenticated by Tommy Lee Smith, who told the signer that the purpose ". . . was to see if there was enough people in the plant that wanted the election, so it could be held, to decide whether we needed a union or not, or wanted one." There is no evidence that Ervin Smith did not read the card before signing. I find that the representation in question was not inconsistent with the clear designation on the face of the card, and it shall be counted toward the Union's majority in this proceeding.

114. *Shirley P. Smith* (GC 314) was an incumbent employee at the time she testified. At the time she executed a card, she was told that the purpose of the

blue card was ". . . that if we could get enough cards that they could have an election at J.P. Stevens." She read the card before signing. Such a representation is not inconsistent with the clear designation on the face of the card, and Smith's card shall be counted toward the Union's majority in this proceeding.

115. *Tommy Lee Smith* (GC 517) signed a card given to him by his brother, Ervin Ray Smith. His brother indicated that the card was "to see if we could get enough people together to get a union election." Smith signed several cards during the campaign, and with respect to that in issue here, there is no evidence that said representation was inconsistent with the clear designation on the face of the card. It shall be counted toward the Union's majority in this proceeding.

116. *Audie S. Spell* (GC 61) was actively employed by the Respondent at the time he testified. He signed a card during the campaign at the request of union organizer Ray Paulhus. According to Spell, Paulhus told him that the card would be used ". . . to have an election, to get enough blue cards to have an election." Spell acknowledges that Paulhus read him the card in the presence of his wife. There is no evidence that Paulhus, in reading the card, departed from the precise terms thereof. No representation at odds with the clear designation or the face of the card was shown and it shall be counted as a valid designation.

117. *Thelma Virginia Stokes* (GC 263) and 118. *William G. Stokes* (GC 264) are husband and wife. Mrs. Stokes no longer works for J. P. Stevens, but her husband was actively employed at the time he testified. Union organizer Phillip Pope initially authenticated their cards. According to Mrs. Stokes, Pope told her that the card "wouldn't be used for anything except to get enough to elect, to vote for it, to come into the plant and vote." She acknowledged that she read the card before signing it. Mrs. Stokes testified that she signed the card because her

husband told her he was going to sign it, and she indicated that he told her that he did so because "he wanted the union in." Mr. Stokes denied reading the card. He claims that Pope told him that the card would be used to have a vote. Mrs. Stokes had little recollection of what transpired in her conversation with Pope, and Mr. Stokes was an unbelievable witness who manifested a lack of candor in describing his union sentiment during the campaign under scrutiny here. Contrary to his wife, he claimed that he did not particularly want a union in the plant at the time he signed, adding that he had not changed his mind concerning union representation. Mr. Stokes attended the speeches in April 1977 which were presided over by the plant manager, and which pertained to the issues in this proceeding. Mr. Stokes was evasive, and seemed bent on excusing his earlier support of the union as a by-product of union trickery, rather than his own judgment. His testimony that he did not read the card before signing it was unbelievable. With respect to these cards, I find that credible evidence does not support Respondent's challenge thereto and both shall be counted as valid designations in this proceeding.

118. *Helen E. Surcy* (GC 248). Surcy's card was initially authenticated by Phillip Pope. According to Surcy, she signed the card when Pope visited her home, and explained that "it would be used for better—to get an election in and for the people to vote whether they wanted a union in or whether they didn't." She also testified that Pope told her that the Union would help benefit the employees by getting better wages. She indicated that she did not read the card, but that Pope read it to her, and that what he read did not mention anything about an election. Previously, Pope testified that he read the card to Surcy in the presence of her husband. I am convinced that Surcy was accurately made aware of the content of the card, and that the representation she attributes to Pope did not alter the clear meaning thereof. It shall be counted toward the Union's majority in this proceeding.

120. *Brenda Taylor* (GC 524) testified that she signed a card given her by a fellow employee. She was told by the latter that if enough cards were signed, they could have an election to vote the union in. She was told that execution of the card did not obligate her in any way. Although in my opinion no representation was made inconsistent with the clear designation on the face of the card, it is also noted that Taylor testified that she did not rely on any such representations, but signed the card because she wanted the union. Her card constitutes a valid designation of the Union and it shall be counted toward the Union's majority in this proceeding.

121. *John Harvey Taylor* (GC 58) was given a card by an unidentified employee who told him it was for a union election. Pursuant to a leading question by Respondent's counsel, Taylor indicated that the employee solicitor did not tell him that it would be used for any other purpose. Nonetheless, Taylor read the card, and any such representation did not cancel out the clear designation on the face thereof. It shall be counted toward the Union's alleged majority.[117]

122. *Barbara B. Torrans* (GC 193) and 123. *Ellis Ray Torrans* (GC 192) are husband and wife. Neither were employed by Respondent at the time they testified. Both signed cards when visited at their home by union organizer Michael Black. It is the sense of their testimony

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[117] According to the credited testimony of Raymond Paulhus who initially authenicated the card of John Taylor, the latter made all entries thereon. Although Taylor was not employed by the Respondent at the time of the hearing, and accordingly appeared to be disinterested, I have some difficulty believing his testimony that he signed the card on an explanation that it was necessary to obtain an election. His card is dated February 4, 1975, and hence, it was executed at a time when the election had already been scheduled, and apparently at a time when this fact was a matter of common knowledge. Taylor impressed me as lacking a clear recollection of what occurred at the time he signed and he seemed a bit confused in relating the circumstances under which he executed his card.

that Black discussed the benefits that the Union could gain for them, and told them that the Union had to have a certain number of cards signed before it could come into the plant to get an election. Mr. Torrans read the card before signing it. Mrs. Torrans denied reading the card, but with the exception of the date, her card appears to have been completed in her handwriting. Although Mrs. Torrans was not actively employed at the time she testified, I viewed her testimony in this latter respect as suspicious, and once again find it difficult to accept that an individual could have such a clear recollection that they did not read a document they signed in the course of a controversial union campaign. I discredit her in this respect, and find that the statements concerning an election attributed to Black did not cancel the clear designation on the face of the authorization cards. Both cards validly contribute to the Union's alleged majority in this proceeding.

124. *Richard G. Tucker* (GC 307) was an active employee at the time he testified. Employee Bernice Jenkins approached him and asked if he ". . . wanted to sign a card so that they could see if they could get up enough blue cards to hold an election." Tucker is among the many incumbent employees who sought to repudiate cards through incredible testimony that they did not read it before signing. I did not believe him in this respect. In passing, it is noted that Tucker attended meetings conducted by Plant Manager Wellons in April 1977 which pertained to this proceeding. I find that the challenge to Tucker's card is unsubstantiated by credible evidence, and it shall be counted toward the Union's majority in this proceeding.

125. *Alice Faye Underwood* (GC 107) was actively employed by Respondent at the time of her testimony. She signed a card at the behest of employee organizers who advised her that the card would be used to get an election to get the Union in. She claims that she did not read the card, but that the union organizer read it to her. In

my opinion, the testimony of Underwood fails to disclose a representation inconsistent with the designation on the face of the card, and it shall be counted toward the Union's majority in this proceeding.

126. *Walter L. Wade* (GC 253) was an incumbent employee at the time he testified. He signed a card at the request of union organizer Phillip Pope, who told him that it would be used "to get enough cards signed to have an election in the plant." Wade denied that he read the card. Here we have another employee, signing a card some 4½ months after the union campaign commenced, who communicated, apparently, with clear recall, that he never read an authorization card during the union campaign. Although reluctant to speculate as to the source of this widespread pattern of unbelievable testimony, I would note that Wade attended a meeting conducted by his plant manager in April 1977. I find that the card he executed constituted a valid designation of the Union.

127. *Rose J. Wainwright* (GC 533) and 128. *William A. Wainwright* (GC 534) are husband and wife. Both were actively employed at the time they testified. There is no evidence whatever suggesting an improper inducement contributing to the execution of a card by Mr. Wainwright. It shall be counted toward the Union's majority. Mrs. Wainwright testified that she picked up the card at the plant gate and took it home. She indicated that she had a discussion with a "union representative," [118] who told her that the Union lacked a few cards necessary to hold an election.[119] Mrs. Wainwright admittedly read the

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[118] This expression by Mrs. Wainwright was in response to a question propounded by Respondent's counsel, which lacked a proper foundation in that it assumed that the unidentified individual Mrs. Wainwright spoke to concerning the purpose of the card was, in fact, an agent of the Union.

[119] With respect to any conflicts in credibility as between the Wainwrights, although it is unnecessary to resolve them, it is noted that the testimony of Mr. Wainwright was the more straightforward and direct, and his account was deemed reliable.

card, and the representation to which she attested is not inconsistent with the purpose expressed thereon. Accordingly, I shall also count her card toward the Union's majority in this proceeding.

129. *Milton Stanley Wells* (GC 119) was an incumbent employee at the time he testified. He related that he was given a card by Union Organizer Ray Paulhus, who informed him that ". . . there were several of the union agents in town going around to the employees and trying to get them to sign the card to see if they would have enough percentage to hold an election." According to Wells, Paulhus did not indicate that the card would be used for any other purpose. Wells admittedly read the card, and I find that the representation he ascribed to Paulhus was not inconsistent with the clear designation on the face thereof. It shall be counted toward the Union's majority in the instant proceeding.

130. *Carol F. Whaley* (GC 303) was an incumbent employee at the time she testified. She claims that she received a card from Bernice Jenkins, who told her to sign it ". . . so that we can get enough people, you know, to get an election." Her denial that she read the card was among the least credible of the witnesses taking that similar tact. On obtaining the card, she did not sign it immediately, but carried it back to her work station where she filled out the card in its entirety, and then returned her card to Jenkins. She claims that she did not read the card while it was in her custody. Significantly, Whaley admits to reading a blue card which was attached to a leaflet, but insists that this did not occur until after she executed her own card. No explanation is offered as to what stirred her curiosity on that occasion. I discredit Whaley's denial that she read the card before signing it, and find that the representation she imputes to fellow employee Bernice Jenkins was not inconsistent with the clear designation on the face thereof. Her card shall be counted toward the Union's majority in this proceeding.

131. *Sylvia Wheeler* (GC 552) was an incumbent employee at the time she testified. She testified that she signed and completed a card at the request of Phillip Pope and an unidentified union organizer. According to Wheeler, she was told that ". . . they needed a few more cards signed so they could get into the mill and hold an election and see how the employees would vote." She could not recall whether the union organizers said that the only thing the card would be used for would be an election. She admittedly read the card. The representation attested to by Wheeler is not inconsistent with the clear designation on the face of the card, and it shall be counted toward the Union's majority in this proceeding.

132. *Edward Franklin Williamson* (GC 35). Williamson was actively employed at the time he testified. He claims that he signed a card, with information received from union organizers, ". . . that the card would be used to hold an election." He claims that at the time he signed the card, he was not aware that an election was scheduled for February 19, 1975. It is noted in this connection, that his card bears the date February 15, 1975. Williamson admits that he read the card before signing it. Although I have difficulty believing the testimony of Williamson that union organizers would have made such a representation concerning the election at that time, in any event their alleged statements did not constitute a renunciation of the clear designation on the face of the card. The Williamson card shall be counted toward the Union's majority in this proceeding.

133. *Wanda Wolford* (GC 305) claims that she signed a card which she obtained from employee organizer Bernice Jenkins. She asserts that he told her that the card would be "used for an election, to get an election." Wolford could not recall how long she possessed the card before returning it to Jenkins, but insists that she did not read the "fine print" on the card. When initially asked whether she filled in all the information on the card, Wolford

indicated that she only signed her name on it. However, when confronted with the card, she admitted that all entries were her own. Although Wolford was no longer employed by Respondent at the time she testified, she was considered to be an untrustworthy witness, and I did not believe her testimony that she did not read the card in its entirety before signing. Otherwise, her testimony reveals no representation inconsistent with the clear designation on the face of the card, which shall be counted toward the Union's majority in this proceeding.

134. *Mable J. Wood* (GC 209) and *Joseph P. Wood* (GC 210) are husband and wife. Both were employed at the time they afforded testimony in this proceeding. Union organizer Michael Black, in authenticating their cards, testified that he first signed up Mr. Wood, who suggested that he solicit his wife who apparently was not present at the time. Black did so and obtained her card a few days later. Both denied that they read the card, and adopted a posture on the witness stand designed to create the impression that they were "sweet talked" into signing. They attended the meetings conducted by the plant managers in April 1977, but had a scant recollection of what transpired on that occasion.[120] Mrs. Wood was a thoroughly unimpressive witness. Her testimony that she did sign the card, though she in fact completed it in its entirety, fit the familiar pattern of incredible testimony afforded in this proceeding. Other aspects of her testimony struck me as a contrived effort to place the onus for her decision to support the Union upon certain untoward activities by the union organizers. I do not believe, however, that the organizers referred to the election, and informed both Mr. and Mrs. Wood that the cards would be used to enable the Union to participate in an election. In the case of Mrs. Wood, I find that this representation was not in-

[120] Mrs. Wood could recall that plant manager Shelton stated that employees who are called to testify in this proceeding should tell the truth. She could recall little else.

consistent with the clear message on the face of the card, and her card shall be counted. With respect to Mr. Wood, however, as I believe his testimony that he could not read, and, as it does not appear that any one read the card to him prior to his signing, [121] I shall reject his card.

135. *Mary Ann Wood* (GC 56) was an incumbent employee at the time she testified. Although the card in evidence bearing her signature reflects that it was completed in its entirety by Wood, she too denied reading the fine print before signing, or that she read any other card that she had picked up previously. She attended the April 1977 meeting with her plant manager in which this hearing was discussed. She testified that she signed the card at the request of union organizer Ray Paulhus, who told her "they had to have enough signatures on the blue cards in order to get an election at J. P. Stevens." Although in response to a leading question by Respondent's counsel, she indicated that that was the only thing that Paulhus told her about the cards, she goes on to indicate that he discussed the advantages of union representation. Wood was an argumentative and evasive witness, and I particularly did not believe her specific recollection that she only read the first three lines of the card that she signed 2½ years previously. I am unwilling to except [sic] her testimony as credible evidence that she signed the card on an improper representation, and shall count it toward the Union's majority in this case.

By way of summary, it is noted that of the authorization cards specifically contested in Respondent's brief, 135 cards have been found to constitute valid designations of the Union. These cards are listed in Appendix B attached hereto.

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[121] Joseph Wood signed the card on December 9, 1974, and he was alone with the union organizers at the time. He concedes that he did not tell the union organizers that he was illiterate.

(3) Unchallenged designations

With respect to properly authenticated authorization cards which are in evidence, and not subject to specific challenge in Respondent's brief, Appendix C lists 426 valid designations. With respect to each, the record has been reexamined by the undersigned, and it has been concluded that all were properly authenticated by credible evidence, and that neither misrepresentation nor any other infirmity bars their being counted toward the Union's majority in this case. However, certain of these cards, while not specifically challenged in the Respondent's brief and considered valid, warrant clarifying comment as follows:

David Blanton (GC 18) was actively employed by the Respondent at the time he testified. He is an illiterate, whose card was initially authenticated by employee organizer Jimmy Lee Smith. Smith credibly testified that he read the card to Blanton because the latter could not read or write. Blanton denied this, and claims that he signed on the representation by Smith that ". . . all it was suppose to be used for was just to have a vote, get enough cards signed to have a vote on it." Blanton was not considered a reliable witness, both as to the denial that the card was read to him, and insofar as he attempts to create the impression that he signed the card on a representation that it would be used solely for purposes inconsistent with the clear designation appearing on the card. His card shall be counted toward the Union's majority.

Joseph Leon Brooks (GC 181) was an incumbent employee at the time he testified. He related that he signed a card when visited at his home by a union organizer.[122] He claimed that he was told by the union organizer that the card would "just be used for an election." Brooks denied that he read the card before signing it. This,

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[122] The Brooks card was initially authenticated by union organizer Alfred L. Motley.

despite the fact that all entries appearing on his card were in his handwriting. His testimony, that during the 5 months that the campaign was in progress before he signed the card, he did not read any such document was unbelievable. Furthermore, his card dated February 1, 1975, was executed after the election had been scheduled, and after, according to the speech of General Manager Walker on January 28, 1975, that fact was probably a matter of common knowledge. Brooks was an incredible witness, who struck me as inclined to afford any testimony necessary to serve his Employer's interest. Motley was an experienced organizer, and it strikes me as improbable that he would make the statement of the type Brooks imputes to him concerning an election at such a late date. The denial by Brooks that he read the card is discredited as is his testimony that any improper inducement was extended at the time he signed. His card shall be counted toward the Union's majority in this proceeding.

Laverne Brown (GC 141) was an incumbent employee at the time she testified. While on the stand and under oath, she unleashed one of the more fanciful canards as to the circumstances surrounding the execution of an authorization card. She claimed that she was visited by a union organizer who remained at her house discussing the Union for about 30 to 45 minutes, after which he asked her to sign a card. She allegedly told the organizer that she was not for the Union. Brown goes on to explain, nonetheless, that she "signed the card because he said that that was to show that he had been to see me." She denied reading the card, and on direct examination claimed that she just looked at enough to "sign it." [123] Later in her examination, Brown admitted that her signature on the card alone would have sufficed to furnish the proof of presence requested by the solicitor. When first confronted

[123] Union organizer Cecil Jones had initially authenticated Brown's card and in doing so credibly testified that all writing on that card was that of the signer.

with the card, she indicated that she was not sure that entries, other than her signature, were in her handwriting. Her difficulty in identifying her handwriting on the card was followed by a complete shift in her testimony. Thus, Brown on direct examination had testified that the organizer told her that the only reason she was to sign was to evidence his appearance at her home. Later, after her difficulties in identifying her own handwriting, she indicated that the union organizer told her that the card ". . . was for the election." It is noted in this connection that her card bears the date of February 9, 1975, well after the election had been scheduled, and after common knowledge of this fact was acknowledged in the speech delivered to employees by General Manager Walker. In my opinion Brown was a thoroughly untruthful witness, not above deception, in her deliberate effort to repudiate the clear designation evidenced by the card bearing her signature. It shall be counted toward the Union's majority in this case.

Luther Edward Carraway (GC 33) and *Shirley Carraway* (GC 32) are husband and wife. Both were employed by the Respondent at the time they afforded testimony in this proceeding. Their testimony that they did not read cards before signing was shaky and unbelievable. I also reject as incredible, their assertions that union organizer Harold McIver, with all his experience, would foster solicitation of cards as of February 6, 1975, when the Carraways signed, on expressions that the cards were necessary for an election. In my opinion these employees engaged in an incredible effort, while under oath, to repudiate their cards. Their cards constitute valid designations and shall be counted toward the Union's majority in this case.

Jesse David Cottle (GC 338) was an active employee of the Respondent at the time he testified in this proceeding. He claims that he obtained a card from fellow employee, Roy McCallop, who told him ". . . it was just

for, to have an election, or a vote." Cottle admits that McCallop read him the blue card and that in doing so he made no mention of an election. Warren McCallop, who was also an incumbent employee at the time he authenticated Cottle's card testified without contradiction that all entries on the card were made by Cottle, and that there was no reference to an election in their conversation. In my opinion the testimony of McCallop is more reliable. The Cottle card shall be counted toward the Union's alleged majority.

Floure Fields (GC 21). This card was authenticated by Roger Glasper. Glasper testified that he signed his own card (GC 20) before Fields completed her card. Glasper was mistaken in this regard, but it was my impression that he was an otherwise credible witness, and this discrepancy in his testimony is insufficient to repudiate his otherwise believable testimony as to the authenticity of GC 21. It shall be counted toward the Union's majority in this case.

Bryan H. Heath (GC 233) was an incumbent employee at the time he testified in this proceeding. According to Heath, he signed a card at the request of union organizer Phillip Pope, who told him of the value in signing it and that it would be used to get an election in J. P. Stevens. Heath claims that some time prior to the election, Heath requested that Pope return his card, but he could not relate exactly when this occurred. Although Heath, on examination by Respondent's counsel, indicated that Pope did not tell him the card would be used for anything other than the election, on cross-examination, he admitted to being informed that the card would also be used to improve working conditions. Heath acknowledged that Pope read the card to him. With respect to the alleged representation, I am not convinced that Heath's testimony reflects an accurate portrayal of what was said by Pope in that connection. As for his efforts to retrieve his card, it cannot be determined that this

effort predated the unfair labor practices committed by Respondent in the course of this campaign, and therefore, any action in this respect on the part of Heath, was not clearly uncoerced. His card is deemed a valid union designation.

Elvin C. Smith (GC 195). This card was authenticated by Michael Black. It was dated December, 1974. Black acknowledged that Smith after signing the card asked that it too be returned. Black acknowledges that he did not return the card. Black, in my opinion, honestly expressed a lack of recollection as to when this occurred, but appeared to speculate that it was a week or two after Smith signed the card. The question as to whether the revocation was valid, as preceding significant unfair labor practices need not be reached, as Smith's card could not affect the question as to whether the Union represented a majority. I do not pass upon the question presented by this card.

Lonnie Turner, Jr. (GC 273) was actively employed at the time he testified. He admits that he signed a card at the request of union organizers Phillip Pope and Louis Washington. Apart from his assertion that the organizers told him that they needed so many cards signed in order to have an election, and his claim that he did not read the card, Turner could not recall anything that transpired at the time he signed. Turner impressed me as an untruthful witness, who took the stand with the purpose of refuting his valid designation of the Union. I discredit his testimony insofar as he imputes any improper representations to the union organizers, and, further, I did not believe his assertion that he did not read the card. Although my assessment of Turner's credibility is based exclusively upon personal observation, and consideration of his testimony against the probabilities, it is noted in passing that Turner did attend the April 1977 meetings presided over by plant manager Shelton in which this hearing was discussed. Like other employees who sought to repudiate their cards on the basis of unbelievable testi-

mony, Turner seemed only too willing to euphemize what was actually stated by Shelton on that occasion[124] by describing Shelton's reference to this hearing, as limited to an expression that employees who signed blue cards, simply tell the truth. His card shall be counted toward the Union's majority in this case.

Jedger Whaley (GC 254) testified that he signed a card at the request of Phillip Pope. He allegedly told Pope that he was not for the Union, but asserted that he signed when Pope kept suggesting that he sign a card "because it was just to show that he did not object to the Union coming in and having an election that the card wouldn't be counted as a vote." Whaley denied reading the card. Whaley is an incredible witness. His testimony that he could not recall what if anything was stated by plant manager Wellons at the meeting he attended in April 1977 concerning the blue card or this proceeding struck me as somewhat less than candid. It is my conclusion that any infirmity in the execution of this card would arise solely from Whaley's incredible testimony. His card shall be counted toward the Union's majority in this case.

(4) The Union's Majority

Based upon the foregoing, I find that at least by February 19, 1975, the Union held validly executed authorization cards from 561 employees,[125] a majority of the work force of 1,000 which was then employed.[126]

3. The refusal to bargain

The standard for finding that Respondent violated Section 8(a)(5) and (1) of the Act by refusing to recognize

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[124] See General Counsel's Exhibit 626.

[125] See Appendix B and C attached hereto.

[126] Appendix D attached hereto lists the names of 18 employees whose cards were rejected on various grounds, and one whose card was left unresolved.

and bargain with the Union as prescribed in *N.L.R.B. v. Gissel Manufacturing Co., supra*, has been adequately substantiated on this record. As heretofore found, the Union made effective continuing demands for recognition in the appropriate unit, in which it had received valid designations from a majority of the employees. Furthermore, in the course of the organization campaign, Respondent engaged in a pattern of unlawful conduct designed to foment reversal of the choice manifested through authorization cards under conditions rendering those designations as a more reliable measure of employee choice than the results of the February 19, 1975 election.

In this respect, it is noted that the more serious unfair labor practices occurred within the last 4 weeks of the election campaign. Thus, the implementation of the floor on profit-sharing and the grant of supplemental unemployment benefits alleviated employee discontent which had become manifest at Wallace and which might well have given impetus to the Union's organizational effort. Elimination of this unrest by the unlawful actions of January 21 and February 11, respectively, occurred shortly before the election and in all probability contributed significantly to the reversal of union support subsequently reflected at the polls. In addition, the dramatic, unjustified interference with employee distribution on the eve and day of the election reflected the Employer's disdain for clearly established statutory rights at a time proximate to the casting of ballots. That action might well have impeded employees from communicating important prounion information to their fellow workers, and while this aspect of the interference might have been significant, the Respondent's overall conduct on that occasion subjected employee organizers to open humiliation and again reminded employees demonstrably of Stevens' defiance to legitimate employee rights in a manner reinforcing past management expressions as to the futility of union organization by its employees.

These unfair labor practices occasioned a serious and irreparable disruption of the election process and contributed to the Union's loss of majority.[127] As for the grant of benefits, conventional Board remedies are ineffectual to restore the *status quo ante* or to afford assurances that a rerun election could be held devoid of their lingering effects. Furthermore, this record once more attests to repeated violations in areas where J. P. Stevens had been ordered to effect remedies in the past, and, indeed, the propensity of that firm to ignore statutory remedies is underscored by the fact that, while the Wallace campaign was conducted within the protective province of a contempt order, analysis of the evidence suggests convincingly that high-ranking officials of Respondent acted deliberately and with a directness of purpose in contravening unmistakable statutory guarantees and the spirit of the contempt order to frustrate employee choice during that campaign.

Upon the entire record, I find that Respondent's violations of Section 8(a)(1) were sufficiently serious to support the conclusion that it refused to bargain in violation of Section 8(a)(5) of the Act since January 21, 1975, when it embarked upon its illicit campaign to undermine the Union and to destroy the atmosphere in which a fair election could be conducted.[128]

Having so found, it is necessary to point out that at the hearing, on June 15, 1977, the complaint was amended

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[127] Respondent's assertion that any loss of majority in this case was attributable to employee reaction to the boycott is afforded no weight in assessing the propriety of a 8(a)(5) violation in this case. As the perpetrator of unfair labor practices, Respondent is not to be favored by speculation as to the possibilities that its own unlawful conduct may not have been the controlling cause of employee defections from the Union.

[128] It is noted that the 8(a)(5) violation is predicated upon independent unfair labor practices which, as found below, are also the subject of meritorious objections in Case No. 11-RC-3987.

to alleged [sic] that Respondent further violated Section 8(a)(5) and (1) of the Act by, on or about April 1976, unilaterally limiting membership and participation of hourly employees in its profit-sharing plan, and instituting a pension plan for hourly employees, all without affording notice to, or consulting with the collective-bargaining representative of its employees.

The affidavit of Herbert Hastings Foster Jr., a former general counsel of Respondent,[129] acknowledged that in April 1976, Respondent announced that effective January 1, 1976, the profit-sharing plan would be replaced with a pension plan and that this substitution would be implemented by preservation of the rights of existing participants in the profit-sharing plan, while suspending further contributions to their accounts, and by curtailing all participation in the plan by new employees.[130]

It being clear that the Union at no time was recognized at Wallace as the representative of employees, these modifications in terms and conditions of employment constituted revisions in mandatory subjects of bargaining, and Respondent's failure to negotiate with the Union before implementing them, constituted further violations of Section 8(a)(5) and (1) of the Act. I so find.

IV. Case No. 11-RC-3987

The objections to Employer conduct interfering with free choice in the election conducted on February 19, 1975, remain for consideration. Of the nine objections,

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[129] See GC 602(b).

[130] Hastings Foster testified on June 22, 1977, 1 week after the General Counsel's request to amend the complaint in the above particulars had been granted. His affidavit was in evidence at the time, and he did not disavow its contents insofar as relevant to these new 8(a)(5) allegations. In these circumstances, I find that the relevant portions of the affidavit constitute declaration against interest by an agent of the Respondent amounting to probative proof as to the nature and timing of the changes.

several are predicated upon misconduct which was coextensive with independent 8(a)(1) violations found above. These include objection 1 (prohibition of distribution at the Holly and Carter plants on February 18 and 19), objection 2 (surveillance of union activity),[131] objection 3 (the threat communicated by Cranford to employee Carroll), and objections 5 and 6 (the implementation of a floor on profit-sharing and the announced intention to pay supplemental unemployment benefits.) Accordingly, objections 1, 2, 3, 5 and 6 are hereby sustained.

With respect to the balance of the objections, no evidence was adduced to substantiate objection 9 relative to third party conduct on the part of a local area merchant, and accordingly objection 9 is hereby overruled. Objection 8 is predicated upon a claim that in the course of the campaign, the Employer made material misrepresentations under conditions precluding an effective response. On authority of the Board's decision in *Shopping Kart Food Market, Inc.*, 228 NLRB No. 190, objection 8 is overruled.

As for the balance of the issues, objection 4 relates to the alleged failure of the Respondent to release second shift observers to participate in the polling during their shifts. It will be recalled that at the Carter plant, where this alleged misconduct occurred, there were two polling periods—6 a.m. to 10 a.m. and 4:30 p.m. to 6 p.m. On the morning of the day of the election, a preelection conference was held at 5:30 a.m. Phillip Pope claimed to be the union representative responsible for making the arrangements for the election. He testified that at the

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[131] In sustaining this objection, I rely only upon conduct of supervisors Stallings and Cranford on February 18 and 19 and the conduct of all supervisors at the main entrance during the second shift change at the Carter plant on February 19, all of whom observed employees who were asserting their protected right to distribute literature. The Jenkins-Scholar incident was not shown to have occurred during the critical preelection period, and therefore it is not relied upon as a ground for setting aside the election.

preelection conference held that morning, he possessed a list of observers, containing the names of designated observers from all three shifts. The observers selected by the Union from the third and second shifts attended the morning conference.[132] In the course of the conference, Pope claimed that he indicated that the second shift observers were not in attendance because they left work at 12 midnight, and their return to the plant at that early hour would impose an inconvenience.[133] Jack Cottle, the personnel manager at the Carter and Holly plants testified that Pope did not speak directly to him during the 5:30 a.m. conference, and that he "didn't hear" him say that no employees were present from the second shift. I was not impressed with Cottle's capacity to recall precisely everything that was said at that time and regarded Pope's testimony as the more credible.

The second shift started at 4 p.m. A preelection conference opened at about 4:15 p.m. According to Pope's uncontradicted testimony he at that time asked company representatives for the release of Sarah Fennell, Jimmy Smith, Sally Navaroli, and Emiko Keith, all second shift employees who were then working, but designated by the Union to act as observers. At no time prior to this conference, had the Union disclosed the identity of these observers.[134] Pope testified without contradiction and

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[132] Initially, the observers then working on the third shift were not present. At request of the Union, the Employer, after complaining that the Union had afforded too short a notice, did release three observers from work to attend that conference.

[133] I credit Pope in this regard.

[134] I do not find that in the course of a telephone conversation at about 1 p.m., on the afternoon of February 19, 1975, union organizer Mike Krivosh identified second shift observers to Cottle. Cottle denied that this occurred. In this respect, the Petitioner's evidence is too vague to support a finding that those designated to serve were identified at that time. That testimony indicated that Pope told Krivosh to obtain a list of observers from union organizer

credibly that the Company indicated that as they had received no prior notification, they did not have sufficient time to release the observers. Pope then turned to the Board agent and argued that the Company had released the third shift observers in order that they might attend the 5:30 a.m. preelection conference, and therefore Pope saw no reason why the second shift workers could not be released as had been done in the morning. The Board agent said "Well, I don't know, it's getting time to open the ballot box, if you got your observers here I got to proceed with this election." [135]

It does not appear that any of the four second shift employees designated by the Union participated as observers during the second polling period at Carter. The Union claims that the foregoing interfered with the conduct of the election. The question is not free from doubt. The presence of observers other than Board agents is not required by the Act, and the Board has held that the use of observers at a directed election is a privilege, not a right.[136] Thus, where an observer is unavailable to a

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Ray Paulhus, and to telephone Cottle identifying the observers. Krivosh, with corroboration from Paulhus, claimed that he did so. However, neither Paulhus nor Krivosh could identify the list used, nor could they afford direct testimony that the second shift observers were on any such list. It would be entirely speculative to assume that whatever list was read by Krivosh on that occasion, contained the names of the specific second shift observers that later in the day Pope asked to be released.

[135] Pope identified Cottle and George Shelton, manager of the Carter plant, as having declined to release the observers on that occasion. Cottle claims that he did not attend that conference, explaining that he was at the Holly plant. Shelton did not deny the conduct which Pope attributed to him at the 4:15 p.m. conference, and the fact that Pope might have been mistaken as to the presence of Cottle, does not alter my belief of Pope's testimony concerning Shelton.

[136] See, e.g., *Breman Steel Company*, 115 NLRB 247, 249, *Semi-Steel Casting Co. v. N.L.R.B.*, 160 F.2d 388, 393 (C.A. 8, 1947).

party, the election is not to be set aside in circumstances where that party's plight is attributable to its own lack of diligence. See, e.g., *Westinghouse Appliance Co.*, 182 NLRB 481. More specifically, the Board declined to set aside an election where a union observer was prevented from serving by an employer who denied that employee permission to leave work during the election, where the employee had made no arrangements with the employer to allow for his release from work. See *San Francisco Bakery Employer Association, et al.*, 121 NLRB 1204, 1206. Yet, that case is not necessarily dispositive here.

In the instant case, Petitioner was denied the use of designated observers, not on the basis of its own lack of diligence, but due to conduct on the part of the Employer from which it could rightfully assume that the second shift employees would be released without problem. Thus, company representatives at the 5:30 a.m. conference were aware that second shift observers were not present, and were specifically advised by Pope as to the Union's intention to use them during the polling period which correspond to their shift. No opposition to the release of these employees, nor request that their identity be revealed, was made by the Employer at that morning preelection conference. Aware that the Employer released the third shift employees from work to attend the 5:30 a.m. preelection conference, the Union could rightfully assume that a similar course would be followed with respect to the second shift observers. Absent proof that the release of these employees when specifically requested at 4:15 p.m. would occasion a significant disruption in plant production or discipline, the Employer's failure to release the observers was unfair, and, considering the entirety of its conduct that day, smacked of entrapment, impeding the Union's opportunity for assuring that its interests were served during the conduct of the election. I shall sustain objection 4.

Objection 7 relates to alleged failure of the Employer to comport itself in accordance with terms specified by a decree of a United States Court of Appeals. Thus, it appears that the United States Court of Appeals for the Second Circuit, on September 13, 1972, in *J. P. Stevens & Co. v. N.L.R.B.*, 464 F.2d 1326, decreed that Respondent effect the following remedies:

> 10. If within the next 2 years, the Board schedules an election in which the Union participates at any of the five plants, then, upon request by the Union, the Company shall afford it reasonable access to each of the Company's said plants and appropriate facilities to deliver a 30 minute speech to employees on working time, the date thereof to be within 10 working days before but not within 48 hours prior to any such election.
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> 11. In the event that during a period of 2 years following entry of this order, any supervisor or agent of the Company convenes employees at any of the five plants and addresses them on the question of union representation, upon request of the union, the Company shall make available to the Union and its representatives on each such occasion at a mutually agreeable time, similar facilities so that the Union may present its view to the employees assembled on company time for a similar period.

There is no dispute that the cited terms of the decree applied to the election campaign under scrutiny here. Nor is there denial that the Company complied with the basic obligation to afford access to a union representative to make speeches at times defined in the decree. The sole question is whether the Company afforded "appropriate facilities" for such speeches, and extended "similar facilities" for such purposes. The Charging Party contends that Respondent violated the decree by disparately notifying employees that attendance at speeches given by the plant manager were mandatory, while those given by

the union representative were voluntary; by keeping machines running during speeches given by the union representative, while shutting them off completely during speeches given by the plant manager; and through an incident in which superintendent Robert Cranford impeded employees Glasper and English from soliciting the attendance of fellow employees at a speech given by the union representative.

In agreement with Petitioner the standards set forth in the Court's decree are subject to enforcement in this proceeding pursuant to the Board's authority to police post-election misconduct. As the Petitioner observes, for purposes of this election, the contempt order has as much force and effect as any longstanding policy of the Board calculated to assure that employee choice is exercised in an atmosphere of free choice.

However, with a single exception, the evidence does not persuasively establish that Respondent engaged in misconduct in this regard. Petitioner called four employees to testify in support of the claim that machines were kept running during speeches given by the union representative. Of this group, James Norman Newkirk impressed me as a highly biased witness, with faulty recollection, except as to those matters prejudicial to the Employer. His testimony in material part struck me as reflecting a propensity to relay as fact, matters beyond his knowledge. With respect to Robert Glasper, Gloria English and Reba Young, although there is perhaps some truth in the fact that machines might have been in operation when they left their work areas to attend speeches given by the union representative, it is doubtful that any machines were running in the course of the speeches. The equipment utilized in a textile mill is hardly noise free, and it is unlikely that, if in operation, machinery could not be heard throughout the plant. McIver, the union representative who made the speeches, did not testify to ever having heard equipment running while

addressing the employees.[137] From the entirety of the credible evidence, it was my impression that any failure on the part of the Employer to cut off all machinery promptly and simultaneously before releasing employees, neither interfered with the union meetings nor constituted a substantial noncompliance with the terms of the contempt decree.

Also unreliable was the testimony of these employees suggesting that attendance at the McIver speeches was voluntary, but mandatory for those given by the plant manager. None testified unequivocally that they were told that this was the case. The notices which are in evidence announcing all meetings points out that attendance was not mandatory. One union witness, Gloria English, testified that from reading notices posted on the bulletin board she knew that the attendance at company meetings was voluntary.[138]

I do find, however, that superintendent Robert Cranford did impair employee access to a speech given by McIver. This relates to a single incident involving employees Gloria English and Robert Glasper. Being dissatisfied with the small attendance at one such meeting, Glasper and English elected to go through the plant and to inform others of the speech and urge them to attend. While doing so they encountered Cranford and supervisor David Chestnutt. There is no dispute that Cranford asked Glasper "if he could help" him. Receiving no response,

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[137] Gloria English testified that she could not say that any machine was ever left running during a meeting addressed by McIver.

[138] It was my impression that the testimony of other union witnesses was a product of their own understanding and their sensibilities concerning the consequences of a failure to attend a management sponsored meeting, rather than what they had been told. Their testimony is not deemed credible, insofar as they would have me find that any supervisor or representative of management informed them that attendance at a Walker speech was required.

Cranford repeated this inquiry. Glasper answered that he was looking for employees that might not have known about the McIver speech.[139] Cranford told them that they could go to the meeting, but to leave the rest to Cranford and Chestnutt. Nonetheless, Glasper went up to certain employees to speak with them concerning the meeting, when Cranford again approached, admonishing, "I told you that you are welcome to go to the meeting, but leave the rest of them alone."[140]

There is no question that the effort by Glasper and English to enlist others to attend the union meeting was protected by Section 7 of the Act. Cranford, according to the credited testimony, attempted to, and perhaps did in fact, curtail effectively this activity. In doing so, he impaired employee rights sanctioned by both the court decree and Section 7 of the Act, and in this respect objection 7 is sustained.

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[139] The "can I help you" statement made by Cranford struck me on the record as a whole as a gratuitous, condescending, and unjustified remark. Attendance at the speech was admittedly voluntary, and there was no restriction during such period of movement by employees throughout the plant. The only restriction on employees not attending was that they "conduct themselves in an orderly manner at all times." See, e.g., Respondent 32. Though many employees were scattered about the plant at the time, Cranford admits that he made no similar inquiry to anyone else. The inference is clear that Cranford intervened because he knew and disapproved of what Glasper and English were up to.

[140] This is based upon the credited testimony of English, whose testimony in material respects was corroborated by Glasper. Their testimony reflects an aggressive concern by Cranford with respect to their union activity, and it seemed more reliable, and probable, than Cranford's effort to mitigate the entire incident. A dispute exists, however, concerning the question as to whether Cranford's zeal caused him to physically assault Glasper during the second confrontation. In my opinion, it is unnecessary to resolve this issue, since at best from the Petitioner's point of view, if it did occur, it was simply an expression of rage, incidental to the clear interference by Cranford on that occasion with the Section 7 rights of employees.

Conclusions of Law

1. J. P. Stevents & Co., Inc., is an employer engaged in commerce or an industry affecting commerce within the meaning of Section 2(6) and (7) of the Act.

2. Amalgamated Clothing and Textile Workers Union, AFL-CIO-CLC, the successor to Textile Workers Union of America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent independently violated Section 8(a)(1) of the Act, by orally instructing employees not to engage in distribution of union literature in nonworking areas on their own time; by physically preventing them from doing so; by threatening to call law enforcement authorities to prevent them from doing so; and by telling employees who engaged in such activities to go home, rather than work.

4. Respondent independently violated Section 8(a)(1) of the Act, by engaging in surveillance of employees distributing union literature in nonworking areas on their own time, and by creating the impression that union activities were subject to surveillance.

5. Respondent independently violated Section 8(a)(1) of the Act, by advising an employee that an active union adherent, because of his union activity, should have been discharged earlier.

6. Respondent independently violated Section 8(a)(1) of the Act, by, on February 11, 1975, granting supplemental unemployment insurance compensation to certain employees at the Carter plant.

7. Respondent independently violated Section 8(a)(1) of the Act, by, on January 21, 1975, announcing to employees that a floor would be placed upon losses which had diminished the value of their accounts under its profit-sharing plan.

8. Respondent independently violated Section 8(a)(1) of the Act, by, in April 1977, telling employees to inform on other employees engaged in union activity.

9. By the conduct described in paragraphs 3, 4, 5, 6 and 7, and on the basis of the findings heretofore made with respect to Petitioner's objections 1, 2, 3, 4, 5, 6, and 7, Respondent-Employer engaged in preelection misconduct interfering with the free choice of employees at the election conducted on February 19, 1977, and that election shall be set aside.

10. The following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All production and maintenance employees employed at the Employer's Carter plant, Holly plant and warehouses at Wallace, North Carolina, including plant clerical employees, watchmen, computer programmer in the dye house, electrical technician, and plant driver; excluding office clerical employees, professional employees, cloth store clerk, managerial employees, guards and supervisors as defined in the Act.

11. On or before February 19, 1974, [sic] a majority of the employees in the unit described above, designated and selected the Union as their representative for purposes of collective bargaining.

12. At all times since February 19, 1975, and continuing to date, the Union has been the representative for purposes of collective bargaining of the employees in the unit described above, and by virtue of Section 9(a) of the Act, has been, and is now, the exclusive representative of the employees in said unit for the purpose of collective bargaining with respect to wages, hours and working conditions, and other terms and conditions of employment.

13. Since January 21, 1975, and at all times thereafter, Respondent violated Section 8(a)(5) and (1) of the Act, by refusing to recognize and bargain collectively with the Union as the exclusive collective-bargaining representative of all employees in the unit described above.

14. Respondent violated Section 8(a)(5) and (1) of the Act, by, in April 1976, without prior notification or affording the Union an opportunity to bargain, unilaterally changing the terms of its profit-sharing plan and establishing a pension plan on behalf of employees in the appropriate unit.

15. The unfair labor practices found above have an effect upon commerce within the meaning of Section 2(6) and (7) of the Act.

The Remedy

Having found that Respondent has engaged in certain unfair labor practices, it shall be recommended that it cease and desist therefrom and take certain affirmative action necessary to effectuate the policies of the Act. As the unlawful conduct herein strikes at the heart of the Act and reflects a continuing indifference to the statutorily guaranteed rights of employees, a broad cease and desist order shall be recommended, precluding Respondent from "in any other manner," interfering with, coercing, or restraining employees in the exercise of their rights guaranteed by Section 7 of the Act.

Consistent with the request of the General Counsel and the Charging Party, the cease and desist provisions of the recommended Order and the notice posting requirement are designed to encompass employees of the Respondent at all plants. Officials at high corporate levels were among the architects of serious unfair labor practices in this proceeding. A disregard for law on their part is indicative of Stevens' corporate policy of antipathy

to union activity and the Congressionally defined framework within which such activity is to be conducted.[141] The Stevens' posture of executive contumacy poses a threat to employee rights wherever union activity might emerge. In the circumstances, extension to all Stevens plants of appropriate remedial provisions is viewed as an appropriate preventive measure considering the continuing propensities suggested by the instant case.

In addition to an order of broad geographic scope, the General Counsel and Charging Party seek monetary and nonmonetary relief of an extraordinary nature. The request for remuneration includes reimbursement to the Union for litigation and organizations expenses. Nonmonetary redress is sought to amplify the classic 8(a)(5) refusal to bargain order in the interest of facilitating Respondent's cooperation in the ensuing bargaining process through requirements imposing an immediate duty to furnish relevant negotiating data, as well as the estab-

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[141] Administrative Law Judge Bernard Ries in *J.P. Stevens & Co., Inc.*, JD-871-77, December 21, 1977, at page 78 outlined authoritative comments relative to the centralized origin of Respondent's history of unfair labor practices:

> It is elementary that Stevens' efforts since 1963 to repel the Union's organizational campaign are founded in basic company policy. In *Stevens I*, 380 F.2d 292, 304 (C.A. 2,) the Court said, "[the] evidence shows that the Company's policies were not determined at individual plant levels alone." Two years later, in *Stevens V*, 417 F.2d 533, 537, the Court of Appeals for the 5th Circuit stated, "Stevens has been engaged in a massive multistate campaign to prevent unionization of its Southern plants . . . thus, we assay the order in this atmosphere of persistent, long continued, flagrant violations occurring after and in spite of repeated declarations of illegality by Board and reviewing courts." That was written 8 years, and 13 cases, before *Stevens XVIII*, in which the Court of Appeals for the Second Circuit noted that Respondent has earned a "reputation as the 'most notorious recidivist' in the field of labor law," leaving the impression that "the Company has engaged in a 'program of experimentation with disobedience of the law'." 96 LRRM 2150, 2152, 3159. . . .

lishment of an interim grievance procedure. The General Counsel seeks a conditional companywide bargaining order to be effective automatically through establishment of majority status at any location under conditions in which existing law imposes a duty to bargain. Furthermore, the Charging Party seeks through this proceeding to expand the terms of the 1972 contempt decree to extend both the time and geographic limitations imposed by the Court [142] upon the remedies therein provided. These matters are considered immediatly below.

Refusal to Bargain

The General Counsel seeks an expanded affirmative bargaining order requiring Respondent to ". . . upon request, . . . bargain with the Union, or any labor organization, in the appropriate unit at any of its plants, warehouses, or other facilities, provided the Union, or any other labor organization, is certified, or the Respondent has engaged in conduct disruptive of the election processes, thereby precluding the holding of a fair election, and the labor organization involved enjoyed majority status." In *Heck's, Inc.*, 191 NLRB 886, the Board rejected such a proposal, observing, *inter alia;* as follows:

> ". . . we do not agree with the contention of the General Counsel and Charging Party that such a procedure . . . would provide speedier relief in appropriate cases because it would bypass normal Board procedures. Unless the parties were in complete agreement with respect to all matters pertaining to the representation issue the disagreements would have to be resolved by some tribunal. In the circumstances postulated by this latter proposal, that tribunal would be the court of appeals acting upon exceptions to a report of a special master. There

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[142] *N.L.R.B. v. J.P. Stevens & Co., Inc.*, 464 F.2d 132 (C.A. 2, 1972) (Stevens XIII).

> would be no guarantee that the proceedings before the special master would be any more expeditious than normal proceedings before the Board; moreover the court of appeals or its appointed special master would thereby be deprived of the Board's administrative expertise in the consideration of such disputed matters."

While one cannot be certain that employees of J.P. Stevens ever will enjoy unimpeded opportunities for the exercise of their statutorily conferred rights, the conditional companywide bargaining order sought by the General Counsel lacks utility and might well be counterproductive to the continuing effort to devise remedies assuring future compliance with the law. For the reasons stated in *Heck's, Inc., supra*, the request for a companywide bargaining order is denied.

To remedy the Section 8(a)(5) violation founded upon the Respondent's unilateral curtailment of its profit-sharing plan, the General Counsel and Charging Party urge that Respondent be directed to restore employee profit-sharing accounts, so as to allow employees hired since January 1, 1976 to participate in the plan, and to pay into all accounts an amount equal to contributions and earnings which since January 1, 1976 would have accumulated in said accounts until Respondent complies with said restoration order. This request is found lacking in merit. Despite the limited nature of the litigation on this issue, it is apparent that curtailment of the plan was a tradeoff whereby employees, in lieu of profit-sharing, would be covered by a new pension plan, which was simultaneously announced in April 1976. The remedy sought here assumes that good faith bargaining could possibly have resulted in the retention of both plans. The circumstances, fairly evaluated, renders such a premise unrealistic and to provide a restoration and make whole order in connection therewith is viewed as oppressive and a remedy which lacks reasonable relationship to the nature

of the violation or its effect. The recommended order, in this connection, shall be limited to a cease and desist against future unilateral action.

The Charging Party urges that the remedy include a direction that Respondent establish an "interim" grievance procedure at the Wallace facilities to compliment the bargaining order requested in this case. Prior to this proceeding, the Union had been designated as representative of employees in but two plants of the Respondent—Statesboro, Georgia and Roanoke Rapids, North Carolina. To date collective-bargaining has failed to produce a contract at either location. In the course of negotiations for the first contract at those facilities, J.P. Stevens has been found guilty of bargaining in bad faith. Thus, in *N.L.R.B. v. J.P. Stevens & Co., (Gullistan Division)* 538 F.2d 1152 (C.A. 5, 1976), (Stevens XVII), such a finding was made by the Fifth Circuit Court of Appeals in a contempt adjudication involving the Statesboro plant. Recently, a like finding was made with respect to the Roanoke Rapids plant by Administrative Law Judge Bernard Ries. See *J.P. Stevens & Co., Inc.*, JD-871-77, December 21, 1977. This background renders it unlikely that the bargaining order to issue in the instant proceeding will be hospitably received. At the same time, Respondent's propensity, exhibited in several other cases, to discriminate against employees, including those at Wallace, has been clearly established. Nonetheless the enforced establishment of any formal grievance procedure comes dangerously close to collision with the teachings of the Supreme Court in *H.K. Porter Co. v. N.L.R.B.*, 397 U.S. 99. However, some measure of protection in this area is warranted. Accordingly, it shall specifically be provided, in addition to the conventional cease and desist against unilateral action, that Respondent take no adverse action, whether ostensibly oriented in economic considerations or necessity for discipline, against any employee or group of employees at the Wallace facilities,

without first notfying the Union and affording the latter an opportunity to consult therewith.

On the other hand, the Charging Party's request for an order requiring production of certain information relevant to the administration of grievances and contract negotiations, together with the wage rates, classifications and dates of hire at *all* plants is deemed inappropriate as bearing no relevance to the issues in this case, while delving into areas in which Respondent's affirmative duty, during the process of collective bargaining, are clearly and unmistakeably established by precedent under the Act.

Organizational Costs

The Board has declined to provide for reimbursement of organizational expeditures where there is no demonstrable "nexus" between extraordinary expenditures for such purposes and the unlawful conduct.[143] Such a causal link exists in this case. Thus, the 1974-1975 campaign at Wallace was the third successive organizational effort attempted by the Union. The first began in 1969 and was abandoned in 1970 with the Union's endeavor to process unfair labor practices arising in the course of that campaign. This latter venture met with success, and with the ostensible aid of a contempt decree, the Union renewed the effort at Wallace in early 1973. That campaign terminated at summer's end that same year, again in the face of alleged unfair labor practices. Neither campaign culminated in an election.

It will be recalled that on July 13, 1972, the United States Court of Appeals, Second Circuit, issued a contempt order covering the Wallace employees.[144] In that proceeding, the Respondent's contemptuous behavior was

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[143] See *Tiidee Products, Inc.*, 194 NLRB 1234 (1972); *Winn-Dixie Stores, Inc. v. N.L.R.B.* —— F.2d ——, page 2227, (C.A. 5, 1978).

[144] 464 F.2d 1326.

found to have included the unlawful, discriminatory discharge of 3 Wallace employees because they supported the Union during the 1968 campaign. The contumacy exhibited by Respondent in that campaign was followed by contemptous acts during the 1973 campaign. Thus, violations in 1973 were the subject of a more recent contempt determination by that same Court, issued August 31, 1977.[145]

The Board's most recent pronouncement concerning the reimbursement of organization costs appears in *Heck's Inc.*, 215 NLRB 765, page 768:

> Whether, for instance, an award to compensate for excess organizational costs ought, in the future, to be considered as necessary to restoring the *status quo ante* in certain factual contexts rather than as an extraordinary remedy to be applied only in the case involving frivolous defenses, as we have heretofore held, is an issue which we do not intend here to foreclose from thorough consideration in future cases.

With the foregoing in mind, it is acknowledged that the Board's remedial arsenal ought only be tapped in the interest of safeguarding employee rights. But one cannot lose sight of the fact that those rights have been threatened over the years by the efforts of J.P. Stevens to destroy the Union through persistent violations of the law, Board orders, court decrees, and contempt citations. No end appears to this unrelenting effort to exhaust the resources of this Union[146] in the hope that eventually it will be left with no alternative other than complete withdrawal, an event which more than likely would provide the

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[145] *N.L.R.B. v. J.P. Stevens & Co., Inc.*, —— F.2d —— (C.A. 2) 96 LRRM 2150.

[146] As this record attests, Respondent's unlawful conduct, in the face of viable contempt orders, continued in 1974-1975. In addition, an 8(a)(1) violation growing out of that campaign was found in *Stevens XVI*, 220 NLRB 270.

final stroke to the statutory guarantees which employees in this and other plants have sought to vindicate. This record convincingly demonstrates that past efforts by the Union to organize employees at Wallace were abandoned in the face of flagrant behavior on the part of the Respondent which violated both the Act and outstanding court orders. Thus, the record herein warrants the conclusion that the Union in 1974 was required to engage in a renewal of a prolonged attempt at organization, requiring extraordinary expenditures, which it would not have sustained were Wallace employees afforded the opportunity to effect their right of self determination in an atmosphere free of employer misconduct. In view of the foregoing, restoration of the *status quo ante* to the extent possible is imperative, and saving [sic] the Union whole for unnecessary organizational costs is viewed as contributing to that end. It shall be recommended that Respondent reimburse the Union for all reasonable and necessary costs and expenses sustained in the course of the 1974-1975 campaign plus interest as prescribed in *Florida Steel Corporation*, 231 NLRB No. 117.

Litigation Expenses

With respect to the claim that the Charging Party be reimbursed as to its costs of litigation, the Board has indicated that normally "litigation expenses are not securable by the Charging Party in a Board proceeding even though the public interest is served when the Charging Party protects its private interest before the Board." [147] It has, however, with court approval, recognized an exception to that policy in order to discourage frivolous litigation.[148] Such relief has been withheld, on the other hand, where defenses were debatable, notwithstanding the aggravated nature or pervasiveness of a respondent's un-

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[147] *Tiidee Products, Inc.*, 194 NLRB at 1236.

[148] See *International Union of Electrical, Radio and Machine Workers, AFL-CIO [Tiidee Products, Inc.] v. N.L.R.B.*, 426 F.2d 1234 (1970) cert. den. 400 U.S. 950 (1970).

fair labor practices.[149] Nonetheless, the appropriateness of such relief in aggravated cases, remains open to consideration. For, the Board, upon remand of *Heck's Inc., supra*, from the Supreme Court,[150] reaffirmed its distinction between the award of excessive litigation fees to discourage "frivolous" litigation, and the denial of such relief where the unfair labor practices are simply "aggravated." In doing so, however, the Board stated:

> Nor do we intend to exclude from consideration whether, in determining the appropriateness of awards of attorney fees, litigation costs, and excess organizational costs, we ought to apply some more definitive criterion that the distinction between "debatable" and frivolous" defenses which thus far we have been utilizing.[151]

Unquestionably, confining awards of litigation costs to circumstances where litigation is frivolous serves administrative convenience, for the Board as a regular and routine matter is confronted with violations on the part of employers and unions that may rightfully be described as "aggravated."

But few, if any, who are subject to regulation under this Act, have achieved the excesses of J.P. Stevens. Its history suggests a third standard for measuring the appropriateness of the type of relief under consideration here. Though some 15 years have passed since the Union's first organizational drive, J.P. Stevens has yet to alter its dedication to outright rejection of this Statute and to frustration of the administrative and judicial remedies

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[149] *Heck's Inc.*, 191 NLRB 886, 889. See also *Teri-Flex Products, Inc.*, 200 NLRB 3 (1972), and *Condon Transport, Inc.*, 211 NLRB 297 (1974).

[150] *N.L.R.B. v. Food Store Employees Local 347* [*Heck's Inc.*], 417 U.S. 1 (1974).

[151] 215 NLRB 765, 768.

contemplated thereby. The experience at Wallace, North Carolina has been nothing short of outrageous. To date, two separate contempt citations are traceable to unlawful conduct at those facilities. Although the campaign under scrutiny in the instant proceeding was conducted under safeguards of a prior contempt order, it too was spurned, with Stevens once more reversing the expressed choice of employees through unfair labor practices initiated at high management levels.

Obviously the pattern of disobedience manifested at the Wallace plants and elsewhere has burdened the Union, the Board and the Courts with repeated litigation. As matters have stood for some time, the ability of the administrative-judicial system to withstand the Stevens assault upon its integrity is owing, in large measure, to the Union's vigilance, and unrelenting will to commit its legal resources to the fray. Were it to succumb, the exploits of J.P. Stevens would serve as a historic touchstone for those who would defy the law by subjecting employee organization to the type of endurance struggle experienced here.

In sum, it shall be recommended that the Respondent reimburse the Union for all reasonable and necessary costs incurred in litigating this proceeding. The predicate for such relief is not limited to the seriousness and sustained nature of the violations found herein, but also finds support in Stevens' policy of intransigence whereby court-enforced orders of the Board have been flouted and contempt decrees, reduced to mockery. In the circumstances, the award of litigation expenses is viewed as remedial and nonpunitive, and a remedy which contemplates the recovery of costs which by no means should be viewed as collateral.

Although not specifically requested, this remedy shall be extended to the Board as well. Once again, in this proceeding, J.P. Stevens has engaged in deliberate violations of the law and when considered against the history of contumacy exhibited by this Employer, it is only rea-

sonable that the general tax paying community be relieved from shouldering the expenses entailed in protracted litigation at the hand of Stevens' lawlessness. Thus, it shall be recommended that Respondent be required to reimburse the Board and the Union for their expenses incurred in the "investigation, preparation, presentation, and conduct of these cases, including the cost and expenses incurred for reasonable counsel fees, salaries, witness fees, transcript costs, printing costs, travel expenses and per diem, and other reasonable costs and expenses." [152]

The Access Package

The Charging Party's request for renewal of the "access package" set forth in the 1972 contempt adjudication has been accommodated by the action of the Court of Appeals for the Second Circuit in the 1977 contempt adjudication. Thus, on October 19, 1977, that Court entered an order against the Respondent,[153] which included the following:

> 11. Upon request of the Amalgamated Clothing and Textile Workers Union of America, AFL-CIO (the Union), made within two years from the date hereof, the Company shall immediately grant the Union and its representatives reasonable access to the plant bulletin boards and all places where notices to employees are customarily posted, at each of the Company's plants in North Carolina and South Carolina for a period of one year from the date of request.
>
> 12. In the event that during a period of two years following entry of this order any supervisor or agent of the Company convenes any group of employees at any of the Company's plants in North or South Carolina and addresses them on the question of union

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[152] See *Tiidee, supra*, 194 NLRB at pp. 1236-1237.

[153] *N.L.R.B. v. J.P. Stevens & Co., Inc.*, —— F.2d —— (C.A. 2, Oct. 19, 1977), 96 LRRM 2748.

representation, the Company shall first give the Union reasonable notice thereof and afford two Union representatives a reasonable opportunity to be present at such speech, and, upon request of said representatives, the Company shall permit one of them to address the employees for the same amount of time as the Company's address.

13. If within the next two years, the Board schedules an election in which the Union participates at any of the Company's plants in North or South Carolina, then, upon request by the Union, the Company shall afford at least two Union representatives reasonable access to each of the Company's said plants and appropriate facilities to deliver a 30-minute speech to employees on working time, the date thereof to be within 10 working days before but not within 48 hours prior to any such election.

14. Upon request of the Union, the Company shall immediately furnish it with lists of the names and addresses of all of the Company's employees at each of its plants in North and South Carolina as of the latest available payroll date, and shall furnish a corrected, current list to the Union at the end of each six months thereafter during the two year period.

15. For the two year period, upon request of the Union, the Company shall without delay, permit a reasonable number of Union representatives access for reasonable periods of time to all its canteens, rest and other non-work areas, including parking lots, within each of its plants in North and South Carolina, for the purpose of communicating orally and in writing with the employees in such areas during changes of shift, breaks, mealtime or other non-work periods. The Company shall formulate rules on this subject in the same manner as provided in paragraph 10.

These provisions appear sufficiently current to obviate present revision in a manner which could result in overlapping and confusing compliance periods.

As for the Charging Party's claim that the substantive terms of the above order be incorporated herein and extended beyond the States of North and South Carolina on a companywide basis, precedent implies that an extension of "access remedies" beyond the employees directly affected by unfair labor practices is to be afforded close scrutiny. To date, the Board has confined the remedies under consideration here to the plant [154] or areas in which the unfair labor practices arose.[155] On the other hand, in *Stevens VIII*, a case arising in Roanoke Rapids, North Carolina, the Board rejected the Union's request that the terms of its Order in that case be extended to include all Stevens plants in North Carolina, South Carolina and Georgia.[156]

The remedies in question here constitute affirmative aids to organization, and since presently extant at North and South Carolina plants, the emerging question is whether the unfair labor practices in this case create a sufficient imbalance in plants located elsewhere, to warrant union access beyond those States. I think not. To require notification whereby *all* employees are assured that unfair labor practices committed at one location will not be repeated at their plant is one thing, but to afford direct substantive organizational support at those other locations, absent a basis for inferring that the other plants have

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[154] See e.g., *Stevens XII*, 190 NLRB 751; *Stevens VII*, 179 NLRB 254, 289; *Stevens V*, 171 NLRB 1202.

[155] Such remedies were extended on a multistate basis (North and South Carolina) in *Stevens I*, 157 NLRB 869, *Stevens II*, 163 NLRB 217; *Stevens III*, 167 NLRB 266 and *Stevens IV*, 167 NLRB 258, where, in each case, unfair labor practices were committed on a multistate, multiplant basis.

[156] 181 NLRB 666, fn. 1.

been influenced by illegal conduct found herein, is quite another. Accordingly, the Charging Party's request that the access package be broadened beyond the Carolinas shall be denied on the basis of *Stevens VIII, supra.*

Notice Posting

As heretofore indicated the notice herein shall be posted on a companywide basis and mailed to employees at all plants individually.

In addition the Charging Party requests that employees be assembled at mandatory meetings on company time at which the notice should be read by a union representative. While not convinced that the purpose behind posting requirements would be effectuated through such procedures, it is believed that the Union should be afforded some role in this preventive process. Accordingly, it shall be recommended that mandatory employee meetings be convened on working time at all of Respondent's plants where, in the presence of a union representative, the notice shall be read to employees by the highest management official in the plant.

Upon the foregoing findings and conclusions, and the entire record in this proceeding, and pursuant to Section 10(c) of the Act, it is hereby recommended:[157]

ORDER

Respondent, J.P. Stevens & Co., Inc., New York City, New York, its officers, agents, successors, and assigns shall:

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[157] In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

1. Cease and desist from:

a. Refusing to bargain in good faith with Amalgamated Clothing & Textile Workers Union, AFL-CIO-CLC, as the exclusive collective bargaining representative of employees in the unit found appropriate below for purposes of collective bargaining. The bargaining unit is:

> All production and maintenance employees employed at the Employer's Carter plant, Holly plant, and warehouses at Wallace, North Carolina, including plant clerical employees, watchmen, computer programmer in the dye house, electrical technician, and plant driver; excluding office clerical employees, professional employees, cloth store clerk, managerial employees, guards and supervisors as defined in the Act.

b. Refusing to bargain in good faith, by unilaterally, and without prior notification and bargaining with the Union, making any changes in terms and conditions of employment, or by, without first notifying and then consulting the aforesaid Union, effecting any disciplinary or economic changes in the tenure or status of employees or groups of employees within said unit.

c. Impeding employees in their right to distribute union literature in nonworking areas on nonworking time by promulgation, maintenance, or enforcement of any rule prohibiting employees from engaging in such activity, by physically obstructing them, threatening to call local law enforcement authorities, suspending them, or by in any other manner interfering with their right to engage in such activity protected by Section 7 of the Act.

d. Engaging in surveillance of employees engaged in the distribution of union literature in nonworking areas on their own time, or creating the impression that union activity is the subject of surveillance.

e. Threatening employees with discharge because of their union activity.

f. Instructing employees to report to the Respondent the union activities of other employees.

g. Granting benefits to employees to discourage them from engaging in activities in support of a union.

h. In any other manner interfering with, restraining, or coercing employees in the exercise of their right to self organization, to form, join, or assist the aforesaid union, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or mutual aid or protection, and to refrain from any or all such activities.

2. Take the following affirmative action which is deemed necessary to effectuate the policies of the Act:

a. Upon request, bargain with the aforesaid union, as the exclusive representative of all employees in the appropriate unit described above, and, if an understanding is reached, embody such understanding in a signed agreement.

b. Make whole the Union for all reasonable and necessary organizational costs and expenses sustained during the campaign at Wallace, North Carolina, between September 1974 and February 1975, including, but not limited to, salaries, travel expenses, subsistence, materials, rents, cost of printing, and postage fees, the total amount due under this provision to include interest as set forth in the section of this Decision entitled "The Remedy."

c. Make whole the National Labor Relations Board and the Union for the reasonable costs and expenses incurred by them in the investigation, preparation, presentation, and conduct of this proceeding, said sums to include interest as set forth in the Section of this Decision entitled "The Remedy."

d. Post in conspicuous places at all plants, including all places where notices to employees are customarily posted, for a period of 60 days, copies of the notice

attached hereto and marked as "Appendix A."[132] Copies of the notice, on forms provided by the Regional Director for Region 11, shall be signed on behalf of Respondent, by its president, the chairman of its board of directors, by each of the members of the board of directors and by the highest managerial official of the plant in which the notice is posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced or covered by any other material.

e. Reproduce and mail to the home of each of its employees in all of its plants, a copy of the aforesaid signed notice, thereafter, furnishing the Regional Director for Region 11 proof of such mailing.

f. At such reasonable time after the entry of this Order as the Board may request, convene, on a mandatory basis, during working time, by shifts, employees at all of its plants whereupon said notice shall be read by the highest managerial official in the plant, with reasonable opportunity provided for the attendance of a representative of the Union, in whose presence said notice shall be read.

g. Notify the Regional Director for Region 11, in writing, within 20 days of the receipt of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the election conducted in Case No. 11-RC-3987 on February 19, 1975 be, and it hereby is, set aside.

Dated, Washington, D.C. March 22, 1978

/s/ Joel A. Harmatz
JOEL A. HARMATZ
Administrative Law Judge

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[132] In the event the Board's Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

FORM NLRB-4727 (9-69) JD-176-78

[SEAL] [SEAL]

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

AN AGENCY OF THE UNITED STATES GOVERNMENT

AFTER A TRIAL IN WHICH ALL PARTIES WERE REPRESENTED BY THEIR ATTORNEYS AND AFFORDED THE OPPORTUNITY TO PRESENT EVIDENCE IN SUPPORT OF THEIR RESPECTIVE POSITIONS, IT HAS BEEN FOUND THAT WE HAVE VIOLATED THE NATIONAL LABOR RELATIONS ACT IN CERTAIN RESPECTS AND WE HAVE BEEN ORDERED TO POST THIS NOTICE AND TO CARRY OUT ITS TERMS.

The National Labor Relations Act, gives you, as employees, certain rights, including the right:

To engage in self-organization;

To form, join, or help a union;

To bargain collectively through a representative of your own choosing;

To act together for collective bargaining or other mutual aid or protection;

To refrain from any or all of these things.

Accordingly, we give you these assurances:

The AMALGAMATED CLOTHING & TEXTILE WORKERS UNION, AFL-CIO-CLC is the recognized collective-bargaining [sic] representative of our hourly employees at Wallace, North Carolina.

WE WILL NOT refuse to bargain in good faith for a collective-bargaining [sic] agreement with the aforesaid union regarding wages, hours, and working conditions of the employees at Wallace, North Carolina, nor will we take action affecting wages, hours, and working conditions of such employees without negotiating first with the Union, nor will we discipline, or reduce the job status or tenure of any employee or group of employees at Wallace, without giving advance notice to the Union and affording the latter an opportunity to consult therewith.

WE WILL NOT preclude our employees by posted rule, or oral instruction, from engaging in the distribution of union literature in nonworking areas on their time.

WE WILL NOT prevent employees from distributing union literature on their own time, by physical obstruction, by threatening to call or calling law enforcement authorities, or by telling them that they are suspended.

WE WILL NOT engage in surveillance of employees, nor will we create the impression that we are spying on employees while they are engaged in union activity.

WE WILL NOT tell our employees to report on union activities engaged in by fellow employees.

WE WILL NOT threaten to discharge employees because of their union activity.

WE WILL NOT discourage employees from engaging in activities on behalf of the Union by granting new benefits for that purpose.

WE WILL compensate the Union and the Board for their expenses in preparing for and in conducting this case, and we will compensate the Union for its expenses incurred during the organizational campaign at Wallace between September 1974 and February 19, 1975.

WE WILL permit a representative of the Union access to the plant when this notice is read to all of our employees.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their rights under the National Labor Relations Act.

J.P. STEVENS & CO., INC.
(Employer)

Dated _____ By _____
(Representative) (Title)

_____
President

_____
Chairman Board of Directors

_____
Board of Directors (Member)

_____
Member

_____
Member

_____
Member

_____
Plant Manager

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, U.S. Courthouse, Federal Building, 251 North Main Street, Room 447, Winston-Salem, North Carolina 27101, Telephone (919) 761-3212.

APPENDIX B

	NAME	*G.C. EXHIBIT NO.*	*DATE*
1.	James O. Davis	Lost Card	— —
2.	James Henry Satchell	91	10-30-74
3.	Tison Carr	357	10-21-74
4.	Ruth B. Cavenaugh Costin	359	10-25-75*
5.	Thurman Graham Franklin	382	10-14-74
6.	James Edward Hicks, Jr.	407	9-27-74
7.	Ruth Smith	516	9-23-74
8.	Mamie Twitty	531	10-21-74
9.	Ronnie Williams	563	10-25-74
10.	Glen Scholar	724	12- 6-74
11.	Deleon Simmons	725	10-16-74
12.	Nelson Caraway	147	12-10-74
13.	Dwight Bannerman	573	10-31-74
14.	Richard A. Williams	742	10-31-74
15.	Mary Smith Carter	113	10-28-74
16.	James M. Henry	152	1-21-75
17.	Gloria Alford	345	12-12-74
18.	Kathleen P. Writer	571	10-10-74
19.	Johnathan Moore	713	10-30-74
20.	Katie Rosemary Bryant	350	11- 6-74
21.	Thomas Dean Cole	360	12- 9-74
22.	John R. Garvey	392	8-22-74
23.	Gloria Ann Morris	465(b)	9-24-74
24.	Herman Vance Wallace	535	9-27-74
25.	Faith Andrews	194	1-15-75
26.	Elton Farrior	30	2- 5-75
27.	Marvin Parker	131	11-21-74
28.	Garland Hines	15	11- 5-74
29.	William Henry Herring	406	9-26-74
30.	Carroll Hunter	413	10- 8-74
31.	Wanda Marie Whaley	549	10- 9-74
32.	Lavonne Jarman	295	11- 5-74
33.	Lillian Hughes	412	11- -74
34.	Brenda Hughes	187	1-16-75
35.	Ricky Andrews	54	12- 6-74
36.	Nancy Andrews	53	12- 6-74
37.	Betty Jean Baker	164	1-21-75
38.	Dorah N. Batchelor	229	12-12-74
39.	Roland Batchelor	230	12-12-74
40.	Ella Batchelor	55	12- 9-74
41.	Debra Ann Blizzard	232	12-12-74
42.	Bobby Dean Boney	50	9-24-74

* Card misdated as to year should reflect that it was executed on October 25, 1974.

	NAME	*G.C. EXHIBIT NO.*	*DATE*
43.	Julia P. Bostic	228	2- 3-75
44.	JoAnn Piner	492	2- 5-75
45.	Dorothy Bowden	148	1-24-75
46.	James M. Bowden	149	1-23-75
47.	Peggy Bradshaw	215	12- 3-74
48.	Thomas Bradshaw	214	12- 3-74
49.	Charlie T. Brinson	49	12-10-74
50.	Alvis Brown	258	11- 4-74
51.	Hubert H. Brown	227	1-23-74
52.	Lois L. Brown	750	12-18-74
53.	Shelby Brown	175	11-26-74
54.	Ronnie Michael Burney	351	11- 4-74
55.	John Henry Carr	355	12-19-74
56.	David Lee Carter	111	10-28-74
57.	Janet Cartwright	358	11- 2-74
58.	James Cavenaugh	184	1-28-75
59.	Hershal W. Cavenaugh	580	10-28-74
60.	William Clayton Clark, Jr.	75	2- 3-75
61.	Martha Cobia	114	10-29-74
62.	Willie Coston	110	10-28-74
63.	Callie Cromartie	582	10- 7-74
64.	Jessie Cromartie	583	10- 7-74
65.	Nellie P. Davis	37	1-22-75
66.	Betty English	376	11- 4-74
67.	Herbert C. Forbes	88	12- 5-74
68.	Evelyn Estelle Gore	71	12- 6-74
69.	Luther Gore	481	9-24-74
70.	Hazel M. Griffin	235	12-11-74
71.	M. Janet Herring	154	12-16-74
72.	Samuel M. Howard	72	1- 6-75
73.	Geraldine Johnson	221	1-15-75
74.	Sara Lee Johnson	705	9- 1-74
75.	Gracie Lee Jones	156	2- 4-75
76.	Jimmy M. Jones	321	11- 5-74
77.	Wayne M. Keene	424	12-17-74
78.	Betty Turner Kennedy	117	11-14-74
79.	Albert Earl King	335	10-16-74
80.	Norwood Henry King, Jr.	157	1-23-75
81.	Edward W. Kornegay	201	12-12-74
82.	Sara K. Kornegay	200	12-12-74
83.	Henry F. Lee	85	10-29-74
84.	James Daniel McEachin	752	10-18-74
85.	Thomas S. Madigan	332	9-30-74
86.	Iris Jean Mathis	304	11-18-74
87.	David L. Messick	369	10- 9-74
88.	Herman D. Miller	64	12-16-74
89.	Carolyn J. Moore	204	12-13-74
90.	Martha C. Moore	80	11-18-74

	NAME	G.C. EXHIBIT NO.	DATE
91.	Melvin C. Naylor	218	1-14-75
92.	Brenda C. Naylor	219	1-14-75
93.	Kalton Ray Newkirk	241	1-27-75
94.	Donald Ray Parker	485	10-25-74
95.	Terry G. Parker	183	2- 7-75
96.	Ronald Pendergrass	486	12-10-74
97.	Evett Pickett	488	9-24-74
98.	Grace Delois Pickett	176	12- 4-74
99.	James C. Pickett	177	11-26-74
100.	Carl D. Pierce	266	12- 4-74
101.	Eleanor P. Pierce	129	10-11-74
102.	Joyce D. Pierce	491	1-21-75
103.	William P. Pierce	213	12- 3-74
104.	Carolyn C. Potts	161	1-20-75
105.	Thomas Henry Pratt	497	9-23-74
106.	Tyrone L. Robinson	504	9-24-74
107.	David E. Rogers	260	11-11-74
108.	Fay H. Rogers	261	11-11-74
109.	Angela Faye Rouse	291	10-24-74
110.	Anthony Jerome Sholar	509	10-28-74
111.	Timothy J. Sholar	207	1- 3-75
112.	Donnie Mae Smith	96	11- 7-74
113.	Ervin R. Smith	512	10- 8-74
114.	Shirley P. Smith	314	10-28-74
115.	Tommy Lee Smith	517	10-24-74
116.	Audie S. Spell	61	12-18-74
117.	Virginia T. Stokes	263	12- 5-74
118.	William G. Stokes	264	12- 5-74
119.	Helen E. Surcy	248	12- 7-74
120.	Brenda Taylor	524	12- 6-74
121.	John H. Taylor	58	2- 4-75
122.	Barbara B. Torrans	193	12-13-74
123.	Ellis Ray Torrans, Jr.	192	12-13-74
124.	Richard G. Tucker	307	10-16-74
125.	Alice Faye Underwood	107	12- 4-74
126.	Walter L. Wade	253	1-16-75
127.	Rose J. Wainwright	533	11- 6-74
128.	William A. Wainwright	534	11- 6-74
129.	Milton Stanley Wells	119	10-29-74
130.	Carol F. Whaley	303	11-18-74
131.	Sylvia Wheeler	552	1-14-75
132.	Edward Williamson	35	2-15-75
133.	Wanda Wolford	305	11- 8-74
134.	Mabel J. Wood	209	12-12-74
135.	Mary Ann Wood	56	1-23-75

APPENDIX C

	NAME	*G.C. EXHIBIT NO.*	*DATE*
1.	Albertson, Luby W.	136	10- 8-74
2.	Albertson, Luby W. Jr.	137	10- 8-74
3.	Alston, Evelyn N.	46	9-27-74
4.	Anthony, Andrew R. (By Ray Paulhus)	128	11- 1-74
5.	Autry, Ann	47	12- 9-74
6.	Autry, Earl L. Jr.	48	11-12-74
7.	Aycock, Dorothy Marie (By Michael Black)	224	2- 5-75
8.	Baker, Bobby D. (By Ray Paulhus)	77	1- 7-75
9.	Bannerman, Carl E.	41	10-13-74
10.	Bannerman, Henry James	574	9-24-74
11.	Batchelor, Sherman	42	9-25-74
12.	Beasley, Robert L.	348	10-10-74
13.	Bennett, Shelby	180	9-27-74
14.	Blackburn, Ivey J. (By Wayne Lanier)	331	9-26-74
15.	Blanton, Betsy (By Phillip Pope)	231	2-10-75
16.	Blanton, David	18	11- 1-74
17.	Blue, Reginald W. (By Emma Hayes)	340	9-27-74
18.	Boney, Larry	43,43(a)	12- 9-74
19.	Boney, Linda Faye	748	11-30-74
20.	Boney, Ralph	44	9-23-74
21.	Boone, Steven D. (By Michael Black)	222	2- 6-75
22.	Bostic, Joseph Felton	259	11-26-74
23.	Bowen, James Davis Jr.	578	10-16-74
24.	Boykin, Lattie (By Louis Washington)	150	2- 3-75
25.	Bradshaw, Barbara (By Michael Black)	223	2-12-75
26.	Brice, Willie W. (By Raymond Paulhus)	108	10- 7-74
27.	Brooks, Joseph L.	181	2- 1-75
28.	Brown, Eddie W.	51	9-25-74
29.	Brown, Ferris	52	9-25-74
30.	Brown, James C. (By Raymond Paulhus)	78	2- 5-75
31.	Brown, Lott W. (By Phillip Pope)	257	11-13-74
32.	Brown, Marie (By Louis Washington)	165	11-26-74
33.	Brown, Michael (By Raymond Paulhus)	109	10-16-74

	NAME	G.C. EXHIBIT NO.	DATE
34.	Bryan, Michael T. (By Michael Black)	191	Undated
35.	Bryant, Clarence	579	12-18-74
36.	Bryant, James T.	349	10- 8-74
37.	Burney, Cynthia (By Michael Black)	216	11-25-74
38.	Burton, Willie A. (By Louis Washington)	145	11-26-74
39.	Carlton, Winfred N. (By Louis Washington)	146	12- 6-74
40.	Carr, Clifton	353	9-24-74
41.	Carr, Henry Levi	354	11- 6-74
42.	Carr, Roy Campenella	356	11- 3-74
43.	Carraway, Luther Edward	33	2- 6-75
44.	Carraway, Shirley	32	2- 6-75
45.	Carroll, Ernest	22	11-22-74
46.	Carroll, Teresa Lanier	190	1- 6-75
47.	Carter, Alton C., Jr. (By Raymond Paulhus)	135	10- 4-74
48.	Carter, Patricia English	76	12-31-74
49.	Cooper, Robert N.	361	11-22-74
50.	Corbett, Billy R.	362	9-23-74
51.	Corbett, David L.	747	10- 8-74
52.	Corbett, Delois	581	10-10-74
53.	Corbett, Donnie James	364	11- 5-74
54.	Corbett, James Thomas	365	11- 5-74
55.	Coston, James Forrest (By John W. Glisson)	317	11- 9-74
56.	Coston, John D.	366	11- 4-74
57.	Coston, Patricia Ann (By John W. Glisson)	316	11- 9-74
58.	Coston, Samuel L.	367	10- 8-74
59.	Cottle, James Franklin (By Herman Gray)	322	10- 9-74
60.	Cottle, Jessie	338	11- 4-74
61.	Cromartie, Billy	370	11- 7-74
62.	Crumpler, Vernon, Jr.	371	9-24-74
63.	Dail, Grover C.	189	1- 4-75
64.	Daniel, Charlie V. (By Alfred Motley)	182	1-27-75
65.	Davis, Cathy	188	1-22-75
66.	Davis, Jan	584	11- 3-74
67.	Davis, Jerry	585	10-16-74
68.	Davis, Margaret Ann (By Raymond Paulhus)	101	11- 7-74
69.	Days, Samuel B., Jr.	102	11-12-74
70.	Days, Withers	333	10- 2-74

	NAME	*G.C. EXHIBIT NO.*	*DATE*
71.	Dempsey, Harry W. (By Bernice Jenkins)	302	10-15-74
72.	Devane, Stanley	586	10-16-74
73.	Dixon, Debra M.	372	10-10-74
74.	Dobson, Bobby L.	749	10-18-74
75.	Eakins, Brenda	751	12-19-74
76.	Edwards, Bernice (By Bernice Jenkins)	296	11- 4-74
77.	Ellis, Deborah	375	11- 5-74
78.	English, Gloria	27	1-27-75
79.	Eury, Marie A.	25	10- 9-74
80.	Ezzell, Almond D.	378	10- 8-74
81.	Ezzell, Helen L.	589	12- 6-74
82.	Faircloth, Donald Ray	379	10- 9-74
83.	Farland, Beulah Marie	590	12-18-74
84.	Farrior, Joseph Louis (By Raymond Paulhus)	86	10-11-74
85.	Fields,Floure (By Robert Glasper)	21	9-27-74
86.	Farrior, Leslie	380	9-20-74
87.	Futrell, Violet	24	12-18-74
88.	Fennell, Jessie Mae (By Sarah Fennell)	294	10-27-74
89.	Futrell, Doris (By Phillip Pope)	282	11-19-74
90.	Fennell, Sarah	289	10- 9-74
91.	Fussell, Sandra D. (By Phillip Pope)	234	12-18-74
92.	Garris, Douglas	12	10-25-74
93.	Gabriel, Marion, Jr. (By Louis Washington)	173	1- 1-75
94.	German, Betty P. (By Bernice Jenkins)	301	10-30-74
95.	Garris, Aaron F.	387	11- 7-74
96.	Gerrell, Mary Rose	593	11- 4-74
97.	Garris, Susan	393	12- 9-74
98.	Gerrell, Thomas E. (By Raymond Paulhus)	126	11- 4-74
99.	Gideon, Bobby	383	12-18-74
100.	Gilbert, Dean Edward	594	10-16-74
101.	Gilbert, Ida Faye (By Raymond Paulhus)	125	11-15-74
102.	Gilbert, Virginia M.	385	10- 8-74
103.	Gillis, Ann J. (By Herman Gray)	319	2-13-75
104.	Glasper, Robert	20	10-10-74
105.	Glaspie, Earl	391	9-27-74

	NAME	*G.C. EXHIBIT NO.*	*DATE*
106.	Glisson, John W.	310	10- 9-74
107.	Gore, Wanda	390	9-24-74
108.	Gore, Warren Lee	708	9-24-74
109.	Gore, Robert Lee, Jr.	386	12- 6-74
110.	Graham, Emma Lou	388	10-21-74
111.	Gray, Herman Douglas (By Raymond Paulhus)	124	11- 3-74
112.	Gray, Windell	596	10-28-74
113.	Gullifor, Jimmy Joe (By Michael Black)	203	11-25-74
114.	Gurganus, Eunice (By Phillip Pope)	236	1-15-75
115.	Hall, Benjamin A.	394	11-12-74
116.	Hall, Catherine B.	597	10-26-74
117.	Hall, Dwight T. (By Louis Washington)	151	1-31-75
118.	Hall, Joseph Lenon (By Raymond Paulhus)	89	12- 5-74
119.	Hall, Lawrence E. (By Bernice Jenkins)	598	11-18-74
120.	Hall, Paul A.	396	9-27-74
121.	Hall, William D.	397	9-27-74
122.	Hamilton, Frank, Jr. (By Herman Gray)	320	10- 9-74
123.	Harper, Mable (By Louis Washington)	174	12- 5-74
124.	Harrell, Cecil W.	599	10-16-74
125.	Harwell, Bobby	398	11- 1-74
126.	Hatcher, Billy R.	399	9-24-74
127.	Hayes, Emma N.	346	10- 4-74
128.	Hayes, Willie, Jr.	400	11- 6-74
129.	Heath, Bryan H.	233	12-10-74
130.	Henderson, Leland Harold (By Raymond Paulhus)	87	1-21-75
131.	Henderson, Wanda (By Raymond Paulhus)	74	1-21-75
132.	Henry, Brenda	90	10-30-74
133.	Henry, Charles H.	401	10- 8-74
134.	Herring Charles D.	277	11-26-74
135.	Herring, Frank	402	9-24-74
136.	Herring, John Edward	404	10-10-74
137.	Herring, Junior	403	9-26-74
138.	Herring, Lloyd M.	405	10-10-74
139.	Herring, Reba P.	278	11-26-74
140.	Hill, James T. (By Michael Black)	217	12- 3-74
141.	Hollingsworth, James A.	700	11- 7-74
142.	Holmes, Arthur C.	701	10-16-74

	NAME	G.C. EXHIBIT NO.	DATE
143.	Holmes, George M.	409	11- 9-74
144.	Hooper, Ocia D. (By Phillip Pope)	279	11-25-74
145.	Horne, Barbara Ann	410	11- 4-74
146.	Horne, Mangle, Jr.	702	12-18-74
147.	Horne, Sallie D.	703	11-20-74
148.	Horrell, Harvey H. (By Raymond Paulhus)	73	12-14-74
149.	Hudson, Raeford	411	9-25-74
150.	Hulbert, Sophronia	363	12-11-74
151.	Humphrey, Billy T.	330	9-27-74
152.	James, Jessie	414	11-15-74
153.	James, Rucian D.	415	9-26-74
154.	Jarman, Jerry (By Willie Brice)	287	11-14-74
155.	Jeffers, Linda F.	418	10-10-74
156.	Jenkins, Bernice	309	Undated
157.	Jenkins, Mable Ann (By Bernice Jenkins)	318	10- 9-74
158.	Johnson, Allen T.	419	11- 6-74
159.	Johnson, Bonnye R.	704	10-31-74
160.	Johnson, Edwina	420	10- 9-74
161.	Johnson, Nancy	38	1-18-75
162.	Johnson, Stanley L. (By John Glisson)	313	9-27-74
163.	Johnson, Tommie	706	10-30-74
164.	Jones, Albert D.	421	2- 7-75
165.	Jones, Geneva B.	28	12- 7-74
166.	Jones, James	237	12-10-74
167.	Jones, Lloyd D. (By Phillip Pope)	239	12- 4-74
168.	Jones, Marvin (By Phillip Pope)	238	12- 7-74
169.	Jones, Richard F.	422	10- 8-74
170.	Jones, Ronald G.	70	1- 6-75
171.	Jones, Thomas M.	82	11- 7-74
172.	Jones, Tommy (By Phillip Pope)	240	Undated
173.	Jones, Willie Lee (By Raymond Paulhus)	69	12-11-74
174.	Jordan, Linda (By Sarah Fennell)	293 + 423	10-24-74
175.	Keith, Samuel Lee, Jr.	426	10- 9-74
176.	Keith, Emiko	425	9-26-74
177.	Kelley, Jimmy L.	427	10-11-74
178.	Kelley, Ray J. (By Ray Paulhus)	116	11-15-74

	NAME	G.C. EXHIBIT NO.	DATE
179.	Kenan, Steve (By Phillip Pope)	285	12- 4-74
180.	Kennedy, Gary Allen	429	12- 2-74
181.	Kennedy, Gloria A.	26	12- 2-74
182.	King, Chellie	431	10-13-74
183.	Kirkland, Richard S.	432	1- 8-75
184.	Knowles, Peggy Y.	433	9-27-74
185.	Kornegay, Charlie Mac (By Bernice Jenkins)	308	10-16-74
186.	Lamb, Nora (By Cecil Jones)	144	2- 6-75
187.	Lanier, Cynthia	34	2- 5-75
188.	Lanier, Elizabeth	347	9-24-74
189.	Lanier, Ethel I.	437	10- 9-74
190.	Lanier, Katie Mae	311	10- 9-74
191.	Lanier, Marion Ward (By Raymond Paulhus)	81	11- 1-74
192.	Larkin, Ella W. (By Cecil Jones)	140	2- 8-75
193.	Lanier, Wayne	323	9-25-74
194.	Laughter, James R. (By Wayne Lanier)	325	10- 3-74
195.	Lee, Tommy R.	438	11- 4-74
196.	Lee, William F.	439	10-29-74
197.	Lewis, Joe	440	11- 7-74
198.	Lewis, Oscar L., Jr.	441	10- 9-74
199.	McKay, Gladys (By Phillip Pope)	283	11-26-74
200.	McKinzie, James W.	444	9-24-74
201.	McKinzie, Robert Lee (By Raymond Paulhus)	83	11-12-74
202.	McKoy, Martin	66	2- 8-75
203.	McMillian, James Lee, Jr.	445	11- 5-47
204.	Maready, Bonnie (By Michael Black)	212	11-21-74
205.	Maready, Freeman L.	447	11- 8-74
206.	Maready, Robbie	448	11- 9-74
207.	Maready, Sandra	449	11- 7-74
208.	Maready, Willie	450	11- 7-74
209.	Marshburn, Thomas K.	451	11- 8-74
210.	Mathis, Archie Lee	452	10- 8-74
211.	Matthews, Faye P. (By Raymond Paulhus)	65	1-26-75
212.	Matthews, Ruby (By Phillip Pope)	245	1-21-75
213.	Maynor, Frederick S.	381	9-23-74
214.	Maynor, Jessie (By Bernice Jenkins)	297	12- 9-74

	NAME	G.C. EXHIBIT NO.	DATE
215.	Melvin, Arthur J.	508	9-26-74
216.	Merritt, Annie L.	457	10-28-74
217.	Merritt, Dorothy A. (By Michael Black)	197	2- 5-75
218.	Merritt, Larry N.	458	9-26-74
219.	Mitchell, John C.	435	9-25-74
220.	Mitchell, Mandy Lee	459	9-23-74
221.	Mitchell, Oscar, Jr.	460	10- 9-74
222.	Mobley, Albert C.	328	9-26-74
223.	Mobley, Alton (By Phillip Pope)	284	11-11-74
224.	Mobley, Barbara A. (By Phillip Pope)	251	12-14-74
225.	Mobley, John L. (By Phillip Pope)	247	12-10-74
226.	Mobley, Shelvia Jean	461	9-23-74
227.	Mobley, Shirley Faye (By Michael Black)	220	1-15-75
228.	Mobley, Terry Vann	462	12- 9-74
229.	Monroe, Debora D.	714	11-13-74
230.	Monroe, Herbert, Jr.	408	11-15-74
231.	Moore, Deborah G. (By Melvin Tate)	36	1-30-75
232.	Moore, Gwendolyn P.	143	2-7-74*
233.	Moore, Roberta L.	464	11-11-74
234.	Murphy, Brenda (By Emma Hayes)	341	9-27-74
235.	Murphy, Mack W.	466	10- 3-74
236.	Murphy, Mozell	467	9-26-74
237.	Murphy, Priscilla A. (By Cecil Jones)	142	2- 8-75
238.	Murphy, Timothy (By Raymond Paulhus)	62	12-18-74
239.	Murray, Alma (By Louis Washington)	163	12-10-74
240.	Murray, Douglas J.	715	11-14-74
241.	Murray, Lauretta W.	468	11-12-74
242.	Murray, Linda Lee	469	11-11-74
243.	Murry, Ervin, Jo. S. (By Michael Black)	186	1- 8-75
244.	Murrell, Dorothy Carroll (By Michael Black)	29	1-30-75
245.	Murrell, Edward Charles	470	11- 3-74
246.	Murrell, Normal S.	472	12- 6-74
247.	Myers, Walter Thomas	473	9-20-74
248.	Navaroli, Salley Ellen	474	10- 9-74

* Date appearing on card placed inadvertently; should reflect execution in 1975.

	NAME	*G.C. EXHIBIT NO.*	*DATE*
249.	Newkirk, Dannie Dean	475	10-10-74
250.	Newkirk, Donnell (By Michael Black)	202	2-11-75
251.	Newkirk, Floyd K.	716	10-16-74
252.	Newkirk, Fred (By Willie Brice)	286	11-11-74
253.	Newkirk, James Edgar	455	9-23-74
254.	Newkirk, James N.	11	10-10-74
255.	Newkirk, Mamie Ree	476	10-11-74
256.	Newkirk, Mattie B.	454	9-23-74
257.	Newkirk, Roscoe	478	11- 3-74
258.	Newkirk, William T.	479	10- 3-74
259.	Newton, Wisbon Lee	717	10-16-74
260.	Noble, Phillip P.	480	12- 6-74
261.	Norman, Warner W., Jr.	105	10-22-74
262.	Outlaw, Betty Diane (By Phillip Pope)	269	11-25-74
263.	Outlaw, Walter M. (By Wayne Lanier)	329	9-26-74
264.	Owens, Patricia Gail (By Phillip Pope)	242	2-10-75
265.	Padgett, Donald	718	9-27-74
266.	Padgett, Larry	483	9-20-74
267.	Padgett, Orbin W.	482	9-24-74
268.	Page, Randy	484	10- 4-74
269.	Parker, Joyce Leary (By Sarah Fennell)	290	10-24-74
270.	Parker, Michael A. (By Bernice Jenkins)	300	10-15-74
271.	Pate, Carl E. (By Michael Black)	205	1- 8-75
272.	Peterson, Inell (By Louis Washington)	159	1- 8-75
273.	Pickett, Dannie Ray (By Louis Washington)	178	11-26-74
274.	Pickett, David Lee	487	11- 7-74
275.	Pickett, Joan Etta	489	11- 5-74
276.	Pickett, Rayfield D.	417	10- 8-74
277.	Pierce, Harvey Leroy	490	10- 8-74
278.	Pigford, Glen E. (By Raymond Paulhus)	134	10- 9-74
279.	Pigford, James Sam (By Louis Washington)	158	1-22-75
280.	Piner, Alice J. (By Phillip Pope)	243	12-10-74
281.	Piner, Rayford Paul	720	11- 4-74
282.	Plummer, Mary Jane (By Phillip Pope)	268	10-30-74

	NAME	G.C. EXHIBIT NO.	DATE
283.	Pittman, Elenora	493	10-29-74
284.	Powell, Ethelyn C. (By Phillip Pope)	267	10-30-74
285.	Powell, Howard Benjamin (By Phillip Pope)	244	10-30-74
286.	Powell, Ralph C., Jr. (By Raymond Paulhus)	67	1- 4-75
287.	Powell, Robert	416	9-24-74
288.	Pratt, David	494	11- 6-74
289.	Pratt, Jessie C.	495	11- 7-74
290.	Pratt, Patricia M.	496	11-18-74
291.	Pratt, Richard (By Raymond Paulhus)	130	10- 5-74
292.	Pridgen, Dallas H. (By Raymond Paulhus)	132	11- 8-74
293.	Pridgen, Earl T.	498	10- 8-74
294.	Ramseur, Betty (By Michael Black)	198	11-25-74
295.	Raynor, Jeanette M.	104	10-11-74
296.	Raynor, Jimmy Harrell	45	11-19-74
297.	Rhodes, Donald Ray	500	10-10-74
298.	Rhodes, Lloyd	721	10-10-74
299.	Rhodes, Mary K.	502	10- 8-74
300.	Rhodie, Magaline (By Raymond Paulhus)	99	12- 4-74
301.	Rich, Elizabeth J. (By Michael Krivosh)	31	2- 6-75
302.	Ritterbusch, Roy B.	503	9-20-74
303.	Rivenbark, Ray (By Raymond Paulhus)	100	10-11-74
304.	Robinson, David E.	19	10- 9-74
305.	Robinson, Ella	246	1-21-75
306.	Rogers, Armater L. (By Louis Washington)	170	1- 7-75
307.	Rogers, Ralph D.	505	9-23-74
308.	Savage, Lynwood Earl (By Cecil Jones)	139	2-12-75
309.	Shepard, Joyce C. (By Raymond Paulhus)	63	2-14-75
310.	Shields, Donald	723	1-31-75
311.	Shields, Pamela Karen (By Raymond Paulhus)	95	11-22-74
312.	Simmons, Deborah Yvonne	726	10-30-74
313.	Simpson, Willie Mae (By Raymond Paulhus)	133	9-27-74
314.	Sloan, Leon M.	510	11- 5-74
315.	Smith, Alma Tyler (By Louis Washington)	160	1-31-75

	NAME	*G.C. EXHIBIT NO.*	*DATE*
316.	Smith, Delbert Lee	727	9-26-74
317.	Smith, Dunnie	511(a)	9-24-74
318.	Smith, Eunice (By Harold McIver)	40	2- 6-75
319.	Smith, Jimmy Lee	14	10- 9-74
320.	Smith, Laura E. (By Tommy Lee Smith)	729	10-24-74
321.	Smith, R. O.	477	9-24-74
322.	Smith, Robert G.	514	11- 7-74
323.	Smith, Rocky	515	12- 6-74
324.	Smith, Thomas O'Neil (By Louis Washington)	162	1-23-75
325.	Spearman, Billy R.	746	10- -74
326.	Spearman, Jimmy Lee (By Emma Hayes)	344	9-27-74
327.	Spencer, Evans N. (By Raymond Paulhus)	97	11- 5-74
328.	Spencer, Patsy	519	11- 9-74
329.	Stafford, Margaret J.	732	9-27-74
330.	Stallings, Rona Ann (By Raymond Paulhus)	94	10- 4-74
331.	Stevens, Navy Allen (By Raymond Paulhus)	98	10-21-74
332.	Stewart, Eloise (By Raymond Paulhus)	92	10- 8-74
333.	Stokes, Linda C.	93	10-29-74
334.	Strickland, Carolyn (By Raymond Paulhus)	59	1-23-75
335.	Street, Willie Joseph (By Raymond Paulhus)	60	1-31-75
336.	Summerlin, Gerald	520	9-25-74
337.	Summerlin, Patricia	521	9-26-74
338.	Surcy, Danny L.	522	11- 6-74
339.	Swinson, Shelley Jane (By Phillip Pope)	265	11-18-74
340.	Tatum, James	507	10- 8-74
341.	Teachey, Lynda B. (By Phillip Pope)	275	10-21-74
342.	Thomas, Bernice	527	9-26-74
343.	Torrans, Deborah	528	10-11-74
344.	Torrans, Dorothy E. (By Douglas Garris)	13	11-18-74
345.	Torrans, Thomas G.	118	11-15-74
346.	Tucker, Roy W.	16	11- 5-74
347.	Turner, Josie M.	274	10-31-74
348.	Turner, Lonnie, Jr.	273	10-31-74
349.	Twitty, Mary E.	530	11- 4-74

	NAME	*G.C. EXHIBIT NO.*	*DATE*
350.	Tyler, Barbara	566	10-31-74
351.	Underwood, Bille Don	208	2-11-75
352.	Underwood, Jeff (By Michael Black)	211	12-11-74
353.	Usher, Bobby Ray (By Louis Washington)	166	12-13-74
354.	Usher, Rebecca Fay	288	9-24-74
355.	Wainwright, Elizabeth	532	9-24-74
356.	Wainwright, Kenneth E.	255	1- 7-75
357.	Walker, Charles	735	10-25-74
358.	Walker, Graham	536	9-18-74
359.	Walker, Percy W. (By Raymond Paulhus)	115	10-29-74
360.	Walker, Willie (By Raymond Paulhus)	120	10-29-74
361.	Watkins, Brenda Hall	540	11-14-74
362.	Watkins, Catherine	539	11- 8-74
363.	Watkins, Eugene	542	10-21-74
364.	Watkins, Mildred (By Raymond Paulhus)	121	11- 9-74
365.	Watson, Margaret	736	10-15-74
366.	Wells, Earlene (By Phillip Pope)	272	11- 7-74
367.	Wells, Harry M.	543	11- 7-74
368.	Wells, Juanita	544	10-29-74
369.	Wells, Patsy	545	10-23-74
370.	Wells, Robert Latham	546	10-11-74
371.	West, Annie	737	11-20-74
372.	West, John M.	547	11-14-74
373.	Whaley, Bonnie B.	548	9-26-74
374.	Whaley, Jedger	254	1- 6-75
375.	Whaley, Marvin (By Phillip Pope)	250	12-12-74
376.	Whitehead, James E.	553	9-25-74
377.	Whaley, Rayford	551	10- 9-74
378.	Whitfield, Betty	23	10-31-74
379.	Whitley, Mildred R.	738	12- 9-74
380.	Whitley, Tishie Ann (By Louis Washington)	168	12-12-74
381.	Wiggins, Henry	556	10- 9-74
382.	Wilder, Lois Alfreda	555	9-23-74
383.	Williams, Brenda (By Phillip Pope)	271	11- 4-74
384.	Williams, Christine	79	11- 9-74
385.	Williams, Dennis Ray (By Phillip Pope)	249	1-24-75

	NAME	G.C. EXHIBIT NO.	DATE
386.	Williams, Donnie M. (By Phillip Pope)	312	12- 9-74
387.	Williams, Dorothy B. (By Michael Black)	196	2-11-75
388.	Williams, Earl C.	557	9-25-74
389.	Williams, Gloria D. Bannerman	171	12- 9-74
390.	Williams, Hazel R.	739	10-17-74
391.	Williams, James L.	558	9-25-74
392.	Williams, Janice C. (By Wayne Lanier)	327	10- 3-74
393.	Williams, Jerry M.	740	9-25-74
394.	Williams, Kenneth P.	559	10-12-74
395.	Williams, Leander	560	12- 9-74
396.	Williams, Linwood Earl (By Emma Hayes)	343	9-27-74
397.	Williams, Melvin M.	741	11- 7-74
398.	Williams, Romie H.	562	10- 8-74
399.	Williams, Rossie J. (By Wayne Lanier)	324	10- 3-74
400.	Williams, Royce L.	564	10- 8-74
401.	Williams, Thurman	57	1- 4-75
402.	Williams, Timonthy G. (By Wayne Lanier)	326	10- 3-74
403.	Williams, Willie T.	568	10- 8-74
404.	Wilson, Annie C. (By Raymond Paulhus)	123	11- 7-74
405.	Wilson, Lloyd (By Bernice Jenkins)	299	10-16-74
406.	Wilson, Perlie H. (By Louis Washington)	179	12- 4-74
407.	Wood, Billy Jay	743	10-29-74
408.	Wood, Carl, Jr.	567	9-24-74
409.	Wood, Johnny Wilbert (By Phillip Pope)	252	11- 4-74
410.	Woodard, Geraldine	570	11- 6-74
411.	Wright, Lovetta J. (By Phillip Pope)	270	11-19-74
412.	Young, Danny C.	744	10-12-74
413.	Young, Reba	745	10-12-74
414.	Long, Virginia D.	84	11-18-74
415.	Carlton, Jeremiah (By Michael Black)	185	2- 5-75
416.	McAllister, Bernice (By Michael Black)	199	12-11-74
417.	Quinn, Warren (By Michael Black)	206	1-21-75
418.	McAllister, Tommie (By Withens Days)	334	11- 6-74

	NAME	*G.C. EXHIBIT NO.*	*DATE*
419.	Love, Ricky Leon (By Glen Pigford)	336	10-16-74
420.	McCallop, Roy B.	337	10-28-74
421.	McCallop, Mary H. (By Roy McCallop)	339	10-28-74
422.	Brown, Laverne	141	2- 8-75
423.	Long, Sammy F.	442	10-28-74
424.	McArthur, Milton L.	443	11- 6-74
425.	Long, Frankie Mae	709	9-26-74
426.	Marshburn, Anthony E.	711	11- 5-74

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NAME	*G.C. EXHIBIT NO.*
1. Fred R. Dobson	373
2. Leroy Howard	342
3. Adrian Batts	39
4. Paul Bryant	256
5. William Cobia	112
6. Mary Ellen King	280
7. Anita C. Kennedy	428
8. Harold G. Kenney	430
9. Dorothy Reese	262
10. James E. Tart	17
11. Glenda Williams	169
12. Joann R. Willis	122
13. Reba English	225
14. Tonny Lane Parker	298
15. Ruth W. Graham	389
16. Jerry Wayne Gurgainous	384
17. Joseph P. Wood	210
18. Geraldine Underwood	106
Unresolved	
19. Elvin C. Smith	195

APPENDIX C

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 79-1502

J. P. STEVENS & CO., INC.,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.
AMALGAMATED CLOTHING & TEXTILE WORKERS UNION, AFL-CIO, CLC,
Intervenor.

On Petition for Review of An Order of the National Labor Relations Board

---

THIS CAUSE came on to be heard upon the petition of J. P. Stevens & Co., Inc. for review of an Order issued against it by the National Labor Relations Board on August 20, 1979, in Case No. 11-Ca-6077 and 11-RC-3987; and upon the certified list in lieu of a transcript of the record; and the said cause was argued by counsel.

ON CONSIDERATION WHEREOF, It is ordered, adjudged and decreed by the United States Court of Appeals for the Fourth Circuit, that the order be enforced and remanded for determination of expenses.

/s/ William K. Slate II
Clerk

Filed Jan. 8, 1982

APPENDIX D

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 80-1126

AMALGAMATED CLOTHING & TEXTILE WORKERS UNION, AFL-CIO, CLC,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

On Petition for Review of An Order of the National Labor Relations Board

---

THIS CAUSE came on to be heard upon the petition of Amalgamated Clothing and Textile Workers Union, AFL-CIO, CLC for review of an order issued against it by the National Labor Relations Board on August 20, 1979, in Case No. 11-CA-6077; and upon the certified list in lieu of a transcript of the record; and the said cause was argued by counsel.

ON CONSIDERATION WHEREOF, It is ordered, adjudged and decreed by the United States Court of Appeals for the Fourth Circuit, that the order be enforced and remanded for determination of expenses.

/s/ William K. Slate II
Clerk

Filed Jan. 8, 1982

APPENDIX E

EXCERPT FROM BRIEF OF THE NATIONAL LABOR RELATIONS BOARD BEFORE THE COURT OF APPEALS

In the present case, the Board concluded that the Company's flagrant and repeated unfair labor practices required assertion of the Board's authority to award organizational and litigation expenses even though the Company's defenses against the unfair labor practice charges were not frivolous. p. 43.

Opposition

1

Office - Supreme Court, U.S.
FILED
MAY 26 1982
ALEXANDER L. STEVAS,
CLERK

No. 81-1860

IN THE
Supreme Court of the United States
OCTOBER TERM, 1981

J. P. STEVENS & CO., INC.,
Petitioner
v.
NATIONAL LABOR RELATIONS BOARD AND
AMALGAMATED CLOTHING AND TEXTILE
WORKERS UNION, AFL-CIO,
Respondents

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

---

BRIEF FOR THE RESPONDENT UNION IN OPPOSITION

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STATUTES:	
National Labor Relations Act, 49 Stat. 449 as amended, 61 Stat. 136, 73 Stat. 519, 29 U.S.C. §§ 141 et seq.	
§ 10(c)	3
Labor Management Relations Act of 1947, 61 Stat. 136, 29 U.S.C. §§ 151 et seq.	
§ 303(b)	3
MISCELLANEOUS:	
W. S. Gilbert, "The Mikado"	2

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

No. 81-1860

J. P. STEVENS & CO., INC.,
Petitioner

v.

NATIONAL LABOR RELATIONS BOARD AND
AMALGAMATED CLOTHING AND TEXTILE
WORKERS UNION, AFL-CIO,
Respondents

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

---

BRIEF FOR THE RESPONDENT UNION IN OPPOSITION

ARGUMENT

We believe that the statement of the Question Presented in the Brief for the National Labor Relations Board more accurately frames the issue decided below than does the Petition. We also agree with the Statement of the Case and the Argument in the NLRB's Brief. We therefore confine ourselves to two additional points.

1. Petitioner Stevens would attract the Court's attention to this case by assimilating it to a case presently *sub judice*, *Summit Valley Industries, Inc. v. Local 112 United Brotherhood of Carpenters & Joiners of America* (No. 81-497), hereafter *"Summit."* (Pet. 6) Indeed, Stevens filed a motion to expedite consideration of the

Petition for Certiorari in this case requesting that it be considered at conference with the *Summit* case after the latter was argued. Experienced counsel for Stevens is presumably aware that this Court's practice is to hold petitions for certiorari which may be affected by the disposition of cases which are ready for oral argument rather than to accelerate consideration of petitions which have just been filed.[1] The motion thus appears to have been proffered not with the serious expectation that it would be granted, but in order to "lend artistic verisimilitude to an otherwise unconvincing"[2] analogy Stevens would draw between its case and *Summit*. In any event, the decision below is correct, and review unwarranted whatever the outcome in *Summit* may be.

To begin with, the issue of *organizational* expenses is entirely unrelated to any issue in *Summit*. The Administrative Law Judge carefully explained why reimbursement of those expenses is necessary for "restoration of the *status quo ante*" (Pet. App. 201a). See *id.* at 199a-201a.

The award of litigation expenses to the Board and the Union does relate to *Summit* in that Stevens invokes "the American Rule" which ordinarily denies attorneys' fees to the prevailing party in a lawsuit. However, the argument comes too late, since Stevens did not rely on the "American Rule" either before the Board[3] or the Court of Appeals.[4] Moreover, *Summit* raises an entirely distinct statutory question from that tendered by Stevens. Without attempting to anticipate this Court's decision in *Summit* it is clear that the statutory issue there is whether attorneys' fees in a related NLRB proceeding

---

[1] The motion was denied on April 19, 1982. 50 U.S.L.Wk. 3837.

[2] Cf. W. S. Gilbert, "The Mikado", Act II.

[3] See, *e.g.*, *Woelke & Romero Framing Co., Inc. v. NLRB* (Nos. 80-1798 *et al.*, decided May 24, 1982) pp. 20-21.

[4] See, *e.g.*, *Adickes v. S. H. Kress, Inc.*, 398 U.S. 144, 147, n. 2; *United States v. Mitchell*, 445 U.S. 535, 546, n. 7.

are within the term "damages by him sustained" in § 303(b) of the LRMA. Whatever that phrase means Congress thereby determined the extent of the permissible recovery in an action brought under that provision. But in § 10(c) Congress " 'charge[d] *the Board* with the task of devising remedies to effectuate the policies of the Act.' *Labor Board v. Seven-Up Bottling Co.*, 344 U.S. 344, 346. The Board's power is a broad discretionary one, subject to limited judicial review." (*Fibreboard Corp. v. Labor Board*, 379 U.S. 203, 216, our emphasis). Thus, the § 303 remedy was fixed by Congress in 1947, whereas the scope of the § 10(c) remedy is flexible, see particularly *Seven-Up Bottling Co., supra*, 344 U.S. at 351-352. And the issue in *Summit* is what Congress meant in 1947, whereas the issue in this case (if properly presented) is whether the Board exceeded its remedial powers by awarding litigation expenses.

2. The Board's authority under § 10(c) is, of course, subject to the restriction that its remedies may not be "punitive." Stevens did properly preserve its contention that the award of organizational and litigation expenses is "punitive" but that contention was properly rejected by the Board and the Court of Appeals and does not warrant further review. There is no conflict between the circuits. And the Petition tacitly acknowledges that it lacks general importance, while attempting to make a virtue of necessity by an emotive turn of phrase: "Stevens, only because of its history, has been singled out by the Board for punishment never before imposed" (Pet. 18). The court below explained that it is precisely "because of its history" (*id.*) that Stevens "constitute[s] a legitimate class of one" (cf. *Nixon v. Administrator of General Services*, 433 U.S. 425, 472):

> The Company's history of litigation before the Board and in the courts, and its resolute resistance to unionization at any cost, may be without equal: almost thirty cases alleging Stevens' unfair labor practices have been decided to date. The Wallace management, having gained experience in labor relations

> from years of skirmishing with the Union, nevertheless knowingly and willfully violated two contempt decrees imposed by a court of appeals. [Pet. App. 17a]

Then, after quoting with approval from the ALJ's decision (*id.* 17a-18a) the Court of Appeals concluded:

> There is no question that the Board has the power to take J. P. Stevens' history of recalcitrance into account in designing its order. Indeed, it has an obligation to do so. *Textile Workers Union v. NLRB*, 475 F.2d 973, 976 (D.C. Cir. 1973).
>
> Routinely imposing such expenses could, of course, tend to deter meritorious litigation by an employer, but we perceive no such intention on the part of the Board. We interpret the Board's expansion of its prior doctrine to be an extremely narrow one. Only in cases of flagrant, aggravated, persistent, and pervasive employer misconduct will the employer's meritless but arguably non-frivolous litigation justify an award of litigation and organization expenses. It may well be that few employers other than J. P. Stevens—"The most notorious recidivist in the field of labor law," *NLRB v. J. P. Stevens & Co.*, 563 F.2d 8, 13 (2d Cir. 1977), *cert. denied*, 434 U.S. 1064 (1978)—will come within the narrow confines of this exception. [Pet. App. 18a]

CONCLUSION

For the foregoing reasons and those stated in the Brief for the National Labor Relations Board in Opposition, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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Opposition

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No. 81-1860

In the Supreme Court of the United States

OCTOBER TERM, 1981

J.P. STEVENS & CO., INC., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD and AMALGAMATED CLOTHING AND TEXTILE WORKERS UNION, AFL-CIO

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

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QUESTION PRESENTED

Whether, in light of petitioner's past and present violations of the National Labor Relations Act, the Board acted within its broad discretion under Section 10(c) of the Act, 29 U.S.C. 160(c), in issuing an order requiring petitioner to reimburse the Union for organizational expenses and both the Board and the Union for litigation expenses.

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In the Supreme Court of the United States

OCTOBER TERM, 1981

No. 81-1860

J.P. STEVENS & CO., INC., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD and AMALGAMATED CLOTHING AND TEXTILE WORKERS UNION, AFL-CIO

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-21a) is reported at 668 F.2d 767. The decision and order of the National Labor Relations Board (Pet. App. 22a-38a, 39a-230a) are reported at 244 N.L.R.B. 407.

JURISDICTION

The judgment of the court of appeals was entered on January 8, 1982 (Pet. App. 231a). The petition for a writ of certiorari was filed on April 7, 1982. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

A. The History of Unfair Labor Practices at the Wallace Facilities

The Union first engaged in an organizational campaign at the Company's Wallace, North Carolina, plants and warehouses in 1967.[1] The Company responded to that campaign by engaging in a series of unfair labor practices that included the harassment and discharge of two employees because of their union activities and the harassment and discharge of another employee for cooperating with the Board. *NLRB* v. *J.P. Stevens & Co.*, 464 F.2d 1326, 1344-1347 (2d Cir. 1972), cert. denied, 410 U.S. 926 (1973) (*Stevens XIII*). The Second Circuit found this conduct to be "flagrantly contemptuous" of two prior decrees[2]

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[1] The Textile Workers Union of America, AFL-CIO, was the union that sought to organize the Wallace employees. By the date of the unfair labor practice hearing in the present case, the Textile Workers had merged with the Amalgamated Clothing Workers of America, AFL-CIO, to form the Amalgamated Clothing and Textile Workers Union, AFL-CIO (Pet. App. 43a-46a). Both entities will be referred to as "the Union."

[2] *J.P. Stevens & Co.* v. *NLRB*, 380 F.2d 292 (2d Cir. 1967), cert. denied, 389 U.S. 1005 (1967), enforcing with modifications, 157 N.L.R.B. 869 (1966) (*Stevens I*); *Textile Workers Union of America* v. *NLRB*, 388 F.2d 896 (2d Cir. 1967), cert. denied *sub nom. J.P. Stevens & Co.* v. *NLRB*, 393 U.S. 836 (1968), enforcing with modifications, 163 N.L.R.B. 217 (1967) (*Stevens II*). The unlawful conduct in those two cases included the discharge of 71 employees at 20 of the Company's 43 North and South Carolina plants (380 F.2d at 295) and the discharge of 18 employees at seven plants in the same states (388 F.2d at 899, 904 n.9).

These cases were the first of 25 unfair labor practice or contempt proceedings involving the Company to date. See *J.P. Stevens & Co.*, 167 N.L.R.B. 266 (1967), and *J.P. Stevens*

against the Company, noting that "the record here strongly justifies the inference that these respondents deliberately took their chances in ignoring our decrees

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& Co., 167 N.L.R.B. 258 (1967), enforced with modifications, 406 F.2d 1017 (4th Cir. 1968) (*Stevens III and IV*); *J.P. Stevens & Co.* (*Dublin-Nathaniel Plants*), 171 N.L.R.B. 1202 (1968), enforced, 417 F.2d 533 (5th Cir. 1969) (*Stevens V*); *The Black Hawk Corp.*, 177 N.L.R.B. 944 (1969), enforced in part, 431 F.2d 900 (4th Cir. 1970) (*Stevens VI*); *J.P. Stevens & Co., Gulistan Division*, 179 N.L.R.B. 254 (1969), enforced, 441 F.2d 514 (5th Cir. 1971), cert. denied, 404 U.S. 830 (1971) (*Stevens VII*); *J.P. Stevens & Co.*, 181 N.L.R.B. 666 (1970), enforced in part, 449 F.2d 595 (4th Cir. 1971) (*Stevens VIII*); *J.P. Stevens & Co.*, 183 N.L.R.B. 25 (1970), enforced, 461 F.2d 490 (4th Cir. 1972) (*Stevens IX*); *The Black Hawk Corp.*, 183 N.L.R.B. 267 (1970) (*Stevens X*); *J.P. Stevens & Co., Gulistan Division*, 186 N.L.R.B. 180 (1970), enforced, 455 F.2d 607 (5th Cir. 1971) (*Stevens XI*); *J.P. Stevens & Co.*, 190 N.L.R.B. 751 (1971), remanded for reconsideration of additional remedies, 475 F.2d 973 (D.C. Cir. 1973), on remand, 205 N.L.R.B. 1032 (1973) (*Stevens XII*); *NLRB* v. *J.P. Stevens & Co.*, 464 F.2d 1326 (2d Cir. 1972), cert. denied, 410 U.S. 926 (1973) (on contempt), remedial order reported at 81 L.R.R.M. 2285 (1972) (*Stevens XIII*); *J.P. Stevens & Co.*, 217 N.L.R.B. 513 (1975), and *J.P. Stevens & Co.*, 219 N.L.R.B. 850 (1975), enforced, 547 F.2d 792 (4th Cir. 1976) (*Stevens XIV and XV*); *J.P. Stevens & Co.*, 220 N.L.R.B. 270 (1975) (*Stevens XVI*); *NLRB* v. *J.P. Stevens & Co.*, 538 F.2d 1152 (5th Cir. 1976) (on contempt) (*Stevens XVII*); *NLRB* v. *J.P. Stevens & Co.*, 563 F.2d 8 (2d Cir. 1977), cert. denied, 434 U.S. 1064 (1978) (on contempt) (*Stevens XVIII*); *J.P. Stevens & Co.*, 239 N.L.R.B. 738 (1978), enforced in part, remanded in part, 623 F.2d 322 (4th Cir. 1980), cert. denied, 449 U.S. 1077 (1981) (*Stevens XIX*); *J.P. Stevens & Co.*, 240 N.L.R.B. 33 (1979), enforced, 612 F.2d 881 (4th Cir. 1980), cert. denied, 449 U.S. 918 (1980) (*Stevens XX*); *J.P. Stevens & Co.*, 240 N.L.R.B. 579 (1979), enforced, 618 F.2d 100 (4th Cir. 1980) (table) (*Stevens XXI*); *J.P. Stevens & Co.*, 243 N.L.R.B. 996 (1979), enforced, 634 F.2d 624 (4th Cir.

because they thought it profitable for them to do so." *Id.* at 1329. The court's purgation order required the Company, *inter alia*, to give the Union certain access to Company employees through use of Company bulletin boards, limited plant visits, and mailing lists; to notify employees of the court's decree; and to reimburse the Board for all litigation expenses.[3]

The Union engaged in another organizational campaign at the Wallace facilities from September 1974 through February 19, 1975, the date of a Board election which the Union lost by a vote of 540 to 404. The Company's unlawful conduct during the 1974-1975 organizational campaign led to two decisions and orders by the Board, including the decision and order enforced by the court of appeals in the instant case. The first Board decision found that the Company had unlawfully interrogated an employee and solicited the employee to report on other employees' union activities. *J.P. Stevens & Co.*, 220 N.L.R.B. 270, 272-274 & n.10 (1975) (*Stevens XVI*). The Board issued a broad cease and desist order and directed the Company to post an appropriate notice at all of its plants, but declined to grant access remedies sought by the Union. *Id.* at 270-271, 274-275.

B. The Board and Court Decisions in the Present Case

1. The following unfair labor practices at the Wallace facilities were found by the Board and upheld

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1980) (table) (*Stevens XXII*); *J.P. Stevens & Co.*, 244 N.L.R.B. 407 (1979), enforced, 668 F.2d 767 (4th Cir. 1982) (the instant case) (*Stevens XXIII*); *J.P. Stevens & Co.*, 245 N.L.R.B. 198 (1979), modified and enforced, 638 F.2d 676 (4th Cir. 1980) (*Stevens XXIV*); *J.P. Stevens & Co.*, 247 N.L.R.B. 420 (1980), consent judgment, No. 80-7053 (5th Cir. Apr. 6, 1981) (*Stevens XXV*).

[3] The court's remedial order is reported at 81 L.R.R.M. 2285 (1972).

by the court of appeals in the present case, and are not contested in the Company's petition.

The Company granted two benefits to Wallace employees in order to discourage them from engaging in union activity, in violation of Section 8(a)(1) of the Act, 29 U.S.C. 158(a)(1). The first of these was a guarantee—announced on January 21, 1975—that employees would receive at least the full amount of all Company contributions to the employee profit sharing plan from the beginning of the plan in 1965 through 1974. The effect of this guarantee was to indemnify the employees against losses resulting from declining values in the plan's investment portfolio. (Pet. App. 3a-5a, 23a, 57a-66a, 192a.) The second benefit—announced on February 11, 1975, pursuant to a directive by Company Director of Industrial Relations J. M. Jelks—was a payment to approximately 158 laid-off Wallace employees to compensate for decreased state unemployment compensation benefits (Pet. App. 5a-6a, 23a, 66a-74a, 192a).

Shortly before, and during the Board election (held on February 19, 1975), the Company committed additional Section 8(a)(1) violations. On February 18 and 19, the Company, through some 13 supervisors, including one plant manager and two department superintendents, interfered with employee leafletting activities by physically obstructing employee entrance into nonworking areas of the plant, threatening to remove leafletting employees physically, threatening to summon police, and ordering leafletting employees to leave the plant (Pet. App. 7a, 23a, 48a-57a, 192a). On February 18, supervisor William Stallings engaged in surveillance of employee literature distribution; Finishing Department Superintendent Robert Cranford engaged in similar surveillance on two occasions on February 19 (Pet. App. 7a, 23a, 52a-54a,

56a-57a, 192a). Shortly before the election, Superintendent Cranford also threatened an employee with discharge for engaging in union activities (Pet. App. 7a, 23a, 75a-76a, 192a). Also during the pre-election period, supervisor Vaden Scholar indicated to an employee that union meetings were being kept under surveillance (Pet. App. 7a, 23a, 76a-77a, 192a).

The Board found that the Company was obligated to bargain with the Union from the day of the Board election, since the Union had previously obtained valid signatures from 561 of the 1000 Wallace employees on cards authorizing it to act as the employees' bargaining representative and the Company had engaged in unfair labor practices that undermined the Union's majority and rendered a fair rerun election unlikely (Pet. App. 180a, 193a). The Board further found that the Company refused to bargain, in violation of Section 8(a)(5) and (1) of the Act, 29 U.S.C. 158(a)(5) and (1), when, in April 1976, it unilaterally replaced the profit sharing plan with a pension plan (Pet. App. 183a, 194a).

Finally, the Board found that the Company violated Section 8(a)(1) of the Act when, on April 13 and 14, 1977, Plant Managers George Shelton and Jim Wellons, in plant-wide speeches and round-table discussions, solicited employees to give testimony at the Board hearing invalidating their union authorization card signatures and asked employees to report on the efforts of pro-union employees to obtain card signatures (Pet. App. 10a, 24a-26a, 85a, 89a-90a, 192a-193a).[4]

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[4] In early 1977, the Board scheduled an unfair labor practice hearing in the instant case to begin in May 1977 (Pet. App. 25a). Also in early 1977, the Union began a new campaign to obtain authorization card signatures from Wallace employees (Pet. App. 89a-90a).

2. The administrative law judge's recommended order remedying the Company's unfair labor practices, which was adopted by the Board, contained a broad cease and desist provision and affirmative provisions requiring the Company to bargain with the Union for an appropriate unit of employees at the Wallace facilities, to notify all the Company's employees of the Board's decision and order, and to

> b. [m]ake whole the Union for all reasonable and necessary organizational costs and expenses sustained during the campaign at Wallace, North Carolina, between September 1974 and February 1975, including, but not limited to, salaries, travel expenses, subsistence, materials, rents, cost of printing, and postage fees, the total amount due under this provision to include interest * * * [and;]
>
> c. [m]ake whole the National Labor Relations Board and the Union for the reasonable costs and expenses incurred by them in the investigation, preparation, presentation, and conduct of this proceeding, said sums to include interest * * *. [Pet. App. 209a.]

With regard to organizational expenses, the administrative law judge found (Pet. App. 199a-201a) that the Company's prior unfair labor practices at the Wallace facilities, together with the renewed misconduct in the 1974-1975 campaign, warranted the conclusion that the Union's 1974-1975 campaign costs were extraordinary expenditures which the Union "would not have sustained were Wallace employees afforded the opportunity to effect their right of self-determination in an atmosphere free of employer misconduct" (*id.* at 201a).

With regard to litigation expenses, the administrative law judge concluded (Pet. App. 203a) that the

Union's litigation efforts were largely responsible for "the ability of the administrative-judicial system to withstand the Stevens assault upon its integrity." Accordingly, in order to restore union resources lost as a result of the Company's intransigence and to deter similar defiance of the law, the judge awarded the Union litigation expenses (*ibid.*). In addition, the judge found that it was also appropriate to award the Board litigation expenses, since the Company's deliberate violations in the present case, when considered with the Company's history of contumacy, made it "* * * reasonable that the general tax paying community be relieved from shouldering the expenses entailed in protracted litigation at the hand of Stevens' lawlessness" (Pet. App. 203a-204a).

Following the administrative law judge's decision, the Company filed exceptions with the Board, *inter alia*, to the organizational and litigation expense remedies. The Company contended that there was no nexus between organizational costs and any unfair labor practices, and that the award of litigation expenses was a punitive measure because the Board had used a standard for assessing such expenses against the Company that differed from the standard it had used for assessing them against other employers.[5] The Board rejected the Company's exceptions to those remedies and adopted the administrative law judge's decision and order (Pet. App. 22a-32a).[6]

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[5] The Company also contended that any payments to the Union were violative of Section 302 of the Labor-Management Relations Act of 1947, 29 U.S.C. 186, which precludes payments by employers to labor organizations except under limited circumstances. The Company does not press that claim here.

[6] The Board also granted additional union-access and employee notification remedies not recommended by the administrative law judge (Pet. App. 26a-27a).

3. The court of appeals enforced the Board's order, holding (with Senior Judge Field dissenting) that the Board "did not abuse its discretion by ordering the award of organization and litigation expenses" (Pet. App. 16a). The court noted that the Board had provided a reasoned explanation for the imposition of these remedies and that the remedies were designed to dispel the effects of the Company's persistent illegal activity and were not punitive (Pet. App. 16a-17a).

ARGUMENT

1. The first question which the petition seeks to present—*i.e.*, whether Section 10(c) of the Act, 29 U.S.C. 160(c), authorizes the Board to award litigation and organizational expenses to a charging party and litigation expenses to itself (Pet. 6-14)[7]—may

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[7] The Court found it unnecessary to address this question in *NLRB* v. *Food Store Employees Union, Local 347*, 417 U.S. 1, 8 n.9 (1974) (*Heck's*), because it held that the court of appeals had exceeded its reviewing authority in modifying the Board's order to provide for organizational and litigation expenses without first affording the Board an opportunity to determine whether such an award would be appropriate in the circumstances of that case.

On the remand in *Heck's*, the Board made plain that its earlier decision in *Tiidee Products, Inc.*, 194 N.L.R.B. 1234 (1972), ordering the reimbursement of litigation expenses upon a finding that the employer had engaged in "frivolous" litigation, was not intended to encompass the situation in *Heck's*, where, although "the respondent may be found to have engaged in 'clearly aggravated and pervasive misconduct' or in the 'flagrant repetition of conduct previously found unlawful,' * * * the defenses raised by that respondent are 'debatable' rather than 'frivolous.'" *Heck's, Inc.*, 215 N.L.R.B. 765, 767 (1974). The Board held that, in the case of defenses which are "debatable," it would continue to refrain from "assessing litigation expenses against a respondent" and from "ordering reimbursement of excess organizational costs al-

not properly be raised in this proceeding. Before the Board the Company merely contended that the award of organizational expenses was improper because there was no nexus between the Union's organizational costs and the Company's unfair labor practices, and that the award of litigation expenses was punitive because the Board, departing from its customary practice of awarding litigation expenses only where the respondent's defenses are frivolous (see note 7, *supra*), assessed such expenses against the Company because of its past history of unfair labor prac-

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though a nexus has been shown between such excess costs incurred by a union and unfair labor practices committed by an employer" (*ibid.*). However, the Board added (*id.* at 768):

> Whether, for instance, an award to compensate for excess organizational costs ought, in the future, to be considered as necessary to restoring the *status quo ante* in certain factual contexts rather than as an extraordinary remedy to be applied only in the case involving frivolous defenses, as we have heretofore held, is an issue which we do not intend here to foreclose from thorough consideration in future cases. Nor do we intend to exclude from consideration whether, in determining the appropriateness of awards of attorney fees, litigation costs, and excess organizational costs, we ought to apply some more definitive criterion than the distinction between "debatable" and "frivolous" defenses which thus far we have been utilizing.
>
> * * * * *
>
> It is, we believe, a continuing function of this administrative agency to consider on a case-by-case basis, in the light of both our experience and the facts of each case, what remedy will best remedy the misconduct found.

In the light of subsequent experience, the Board has concluded that it would effectuate the purposes of the Act to award organizational and litigation expenses in cases, like the one here, in which the employer has engaged in flagrant and repeated violations of the statute.

tices. Accordingly, Section 10(e) of the Act, 29 U.S.C. 160(e), precludes consideration of the broad statutory authority question that petitioner now seeks to raise. See *Marshall Field & Co.* v. *NLRB*, 318 U.S. 253, 255-256 (1943); *Woelke & Romero, Inc.* v. *NLRB*, No. 80-1798 (May 4, 1982), slip op. 20-21.

In any event, there is no merit to petitioner's contention that the Board lacks authority under Section 10(c) of the Act to award organizational and litigation expenses.

a. Section 10(c) of the Act empowers the Board, upon finding that an unfair labor practice has been committed, to enter an order requiring the respondent not only "to cease and desist from such unfair labor practice," but "to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act." "Within this limit the Board has wide discretion in ordering affirmative action; its power is not limited to the illustrative example of one type of permissible affirmative order, namely, reinstatement with or without back pay." *Virginia Electric & Power Co.* v. *NLRB*, 319 U.S. 533, 539 (1943). Accord: *Phelps Dodge Corp.* v. *NLRB*, 313 U.S. 177, 189 (1941).

Of course, the Act does not empower the Board "to devise punitive measures" or "to prescribe penalties or fines which the Board may think would effectuate the policies of the Act." *Republic Steel Corp.* v. *NLRB*, 311 U.S. 7, 11 (1940). But the "debate about what is 'remedial' and what is 'punitive'" entails entry "into a bog of logomachy"; it is "more profitable to stick closely to the direction of the Act by considering what order does * * * and what order does not, bear appropriate relation to the policies of the Act." *NLRB* v. *Seven-Up Bottling Co.*, 344 U.S. 344, 348 (1953) (citation omitted). The "affirma-

tive action to 'effectuate the policies of this Act' " that the Board may properly take "is action to achieve the remedial objectives which the Act sets forth"—*i.e.*, to encourage "the practice and procedure of collective bargaining" and to protect "the exercise by workers of full freedom of association, of self organization and of negotiating the terms and conditions of their employment * * * through their freely chosen representatives." *Republic Steel Corp.* v. *NLRB*, *supra*, 311 U.S. at 10, 12.

An award of organizational and litigation expenses against employers who, like petitioner, have committed flagrant and repeated violations of the Act is reasonably related to achieving "the remedial objectives which the Act sets forth" (see pages 14-16, *infra*).

b. Contrary to petitioner's contention (Pet. 8-11), a Board award of litigation expenses in cases of frivolous litigation and of flagrant and repeated violations of the Act does not contravene the "American rule" that attorneys' fees are not ordinarily recoverable by the prevailing litigant in federal litigation in the absence of specific statutory authorization. See *Alyeska Pipeline Service Co.* v. *Wilderness Society*, 421 U.S. 240 (1975).[8] First, the litigation expense awards here flowed from the broad remedial provision of Section 10(c) of the Act, which by its terms does not limit the Board's power to make such awards, while the American rule is a limitation on court authority that has been confirmed by a long history of legislation defining the nature and amount of the taxable items of cost in the federal courts.

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[8] Since the American rule applies only to attorneys' fees, it would, in any event, not be relevant to the award of organizational expenses here.

421 U.S. at 250-260.[9] Second, the Board's litigation expense awards are designed to further the public policies of the Act, rather than to reward private litigants. See *National Licorice Co.* v. *NLRB*, 309 U.S. 350, 362 (1940).[10] Finally, the litigation expense awards in the present case are analogous to the exception to the American rule which permits the award of attorneys' fees "when the losing party has 'acted in bad faith, vexatiously, wantonly, or for oppressive reasons * * *.'" *Alyeska Pipeline Service Co.* v. *Wilderness Society, supra*, 421 U.S. at 258-259, quoting *F.D. Rich Co.* v. *United States ex rel. Industrial Lumber Co.*, 417 U.S. 116, 129 (1974).[11]

[9] The cases cited by petitioner for the proposition that administrative agencies may not make such awards (Pet. 9) do not involve statutory provisions authorizing the granting of broad remedial relief.

[10] Accordingly, contrary to petitioner's contention (Pet. 6), a decision in *Summit Valley Industries, Inc.* v. *Local 112, Carpenters & Joiners of America*, No. 81-497 (argued Apr. 28, 1982), as to whether attorneys' fees may be recoverable in a suit brought under Section 303 of the Labor Management Relations Act of 1947, 29 U.S.C. 187, to compensate a private party for damages suffered by reason of unlawful secondary boycotts and jurisdictional strikes, would not be dispositive of the question whether the Board would have power to award such fees to vindicate the policies of the National Labor Relations Act.

[11] Petitioner contends (Pet. 13-14) that the payment of litigation expenses to the Board will impair its impartiality as a tribunal. There is no merit to this contention, since the Board cannot keep such monies. Because the expense payments are received "for the use of the United States," they must be paid "into the Treasury, at as early a day as practicable, without any abatement or deduction * * * or any description whatever * * *." 31 U.S.C. 484. See *ICC—Disposition of Excess Railway Operating Income*, 33 Op. Att'y Gen. 316, 321 (1922).

2. Petitioner also contends (Pet. 14-15) that, even if the Board is empowered to award organizational and litigation expenses, the award here is not authorized by Section 10(c) because it is punitive and, further (Pet. 17-18), that the award is unfair because it rests on a theory employed for the first time in this case. There is no merit to these contentions.

a. The Board reasonably concluded that, in the circumstances of this case, an award of organizational and litigation expenses was necessary in order to protect the statutory rights of Company employees to support the Union and to bargain collectively. As the administrative law judge found (Pet. App. 201a):

> This record convincingly demonstrates that past efforts by the Union to organize employees at Wallace were abandoned in the face of flagrant behavior on the part of [petitioners] which violated both the Act and outstanding court orders. Thus, * * * the Union in 1974 was required to engage in a renewal of a prolonged attempt at organization, requiring extraordinary expenditures, which it would not have sustained were Wallace employees afforded the opportunity to effect their right of self determination in an atmosphere free of employer misconduct.

Therefore, far from infringing upon the Company's right to oppose unionization by lawful means (Pet. 16-17), the organizational expense remedy is designed to prevent the Company from profiting from its unlawful conduct and to place the Union in the position that it would have enjoyed absent that conduct.

The litigation expense remedy is not only designed to restore the *status quo*, but properly recognizes that the Company's recidivism has "raise[d] grave doubts about the ability of the courts to make the provisions of the federal labor law work in the face

of persistent violations." *NLRB* v. *J.P. Stevens & Co., supra*, 563 F.2d at 25-26 (*Stevens XVIII*). While the Company's reimbursement of the Board's litigation expenses will not directly replace the administrative resources lost in combatting the Company's " 'program of experimentation with disobedience of the law' " (*id.* at 22 (*Stevens XVIII*), quoting from *McComb* v. *Jacksonville Paper Co.*, 336 U.S. 187, 192 (1949)) (see pages 2-4, note 2, *supra*), such a reimbursement remedy does properly place on the wrongdoer, rather than the public, the cost of correcting that program (see Pet. App. 203a-204a). The remedy also lessens the profit incentive long found to underlie the Company's disregard of the Act. *NLRB* v. *J.P. Stevens & Co., supra*, 464 F.2d at 1329 (*Stevens XIII*).[12]

b. Nor is the Board's award of organizational and litigation expenses punitive in that it imposes a novel sanction on the Company merely because of its past history of unfair labor practices (Pet. 17). As the court below recognized: " 'There is no question that the Board has the power to take J.P. Stevens' history of recalcitrance into account in de-

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[12] The nonpunitive nature of the litigation expense remedy under the facts of this case is further shown by the litigation expense remedies contained in the two civil contempt decrees involving the Company's unlawful conduct at its facilities in North and South Carolina. *NLRB* v. *J.P. Stevens & Co., supra*, 81 L.R.R.M. at 2287 (*Stevens XIII*); *NLRB* v. *J.P. Stevens & Co., supra*, 563 F.2d at 23 (*Stevens XVIII*). While the remedial powers of the courts in civil contempt proceedings and the Board in unfair labor practice proceedings are derived from different sources, the powers in both instances are remedial rather than punitive in nature. *Gompers* v. *Bucks Stove & Range Co.*, 221 U.S. 418, 444 (1911); *McComb* v. *Jacksonville Paper Co., supra*, 336 U.S. at 191, 193.

signing its order. Indeed, it has an obligation to do so'" (Pet. App. 18a, quoting *Textile Workers Union of America* v. *NLRB*, 475 F.2d 973, 976 (D.C. Cir. 1973)).

Although the Board in prior cases has chosen not to assert its authority to order payment of organizational and litigation expenses against employers who have committed flagrant and repeated unfair labor practices but have not raised frivolous defenses, it has specifically stated (see note 7, *supra*) that it would not be foreclosed from doing so in appropriate future cases. The Company's flagrant and repeated unfair labor practices in this and other cases have at least as grave a tendency to overburden the processes of the Board and the courts and drain the resources of the Union and the taxpayer as does the raising of frivolous defenses. And the Company's solicitation of employees to give testimony invalidating their authorization cards in this case (page 6, *supra*) reflects as grave a misuse of the Board's processes. Accordingly, the court below properly concluded (Pet. App. 16a-17a) that the Board's decision to award organizational and litigation expenses in this case is a proper extension of its policy of awarding such expenses in cases involving the raising of frivolous defenses.

3. Finally, petitioner contends (Pet. 18) that the Board's award of organizational and litigation expenses violates due process because "Stevens may no longer defend a case before the Board solely on the relative merits of the facts present in that case"; it "must now bear an additional burden which no other employer must bear in proceedings before the Board." Petitioner did not raise this contention before the Board, and thus Section 10(e) of the Act would bar consideration of it here (see page 11, *supra*).

In any event, it is without merit. The Board's decision neither limits the Company's right to a fair hearing in the future, nor indicates that the Company will henceforth uniformly be required to pay organizational and litigation expenses. The Board has held only that under the particular facts of this case—where the Company has been found to have continued a well established pattern of deliberately committing serious unfair labor practices and that conduct has sapped the resources of union organizers during campaigns at the plant concerned—the policies of the Act make expense remedies appropriate.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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NATIONAL LABOR RELATIONS BOARD

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Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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PETITIONER'S REPLY TO RESPONDENTS' BRIEFS IN OPPOSITION

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

No. 81-1860

J.P. STEVENS & CO., INC.,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD

and

AMALGAMATED CLOTHING AND TEXTILE WORKERS UNION, AFL-CIO, CLC,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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PETITIONER'S REPLY TO RESPONDENTS' BRIEFS IN OPPOSITION

The Respondents National Labor Relations Board and Union have raised for the first time in their reply briefs the argument that the petitioner is precluded by Section 10(e) of the National Labor Relations Act ("Act"), 29 U.S.C. 160(e), from arguing that the Board's award of litigation expenses is outside the statutory authority granted it by Section 10(c) of the Act. This argument is without merit. First, the question here presented was properly preserved before the Board. Second, assuming for the sake of argument that it was not, the Board has "patently traveled outside the orbit of its authority," *NLRB v. Cheney California Lumber Co.*, 327 U.S. 385,

388 (1946); *NLRB v. Ochoa Fertilizer Corp.*, 368 U.S. 318, 322 (1961), and thus this Court is not precluded from review of this question.

The authority of the Court of Appeals to modify the Board's orders derives from § 10(e) of the Act. This section provides, *inter alia*, that "No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the Court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances." The Board's procedure for the urging of such objections is by the filing of exceptions to a decision of an administrative law judge. Rules and Regulations of NLRB § 102.46, 29 C.F.R. § 102.46 (1979). In compliance with these regulations, the Petitioner filed the following exceptions to the recommended order of the Administrative Law Judge, (the exceptions were not part of the Joint Appendix filed with the Court of Appeals):

> "105. Respondent excepts to the finding that restoration of the *status quo ante* to the extent possible is imperative, and saving [sic] the union whole for unnecessary organizational costs is viewed as contributing to that end [ALJ-120].[1]
>
> 106. Respondent excepts to the recommendation that the Respondent reimburse the union for any reasonable and necessary cost and expenses sustained in the course of the 1974-1975 campaign plus interest [ALJ-120].
>
> 107. Respondent excepts to the finding that "few, if any, who are subject to regulations under this Act, have achieved the excesses of J. P. Stevens and that, therefore, "a third standard for measuring the appropriateness of the type of relief under considera-

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[1] Page references in brackets are to the page numbers in the original slip opinion decision of the Administrative Law Judge's Decision.

tion here" is appropriate for the Respondent [ALJ-121].

* * *

115. Respondent excepts to the recommendation that it reimburse the union for all reasonable and necessary costs incurred in litigating this proceeding [ALJ-122].

* * *

117. Respondent excepts to the finding that the award of litigation expenses herein is remedial and not punitive and that the recovery of costs assessed is not collateral [ALJ-12].

118. Respondent excepts to the unrequested extension of litigation reimbursement to the Board [ALJ-122].

119. Respondent excepts to the finding that there is any foundation for finding lawlessness by the Respondent which supports an award of litigation expenses [ALJ-122].

120. Respondent excepts to the recommendation that it be required to reimburse the Board and union for expenses incurred in the "investigation, preparation, and conduct of these cases, including the cost and expenses incurred for reasonable counsel fees, salaries, witness fees, transcript costs, printing costs, travel xpenses and per diem, and other reasonable costs and expenses" [ALJ-122]."

Although the petitioner's argument before the Board and the Court of Appeals emphasized the Board's departure from its standard in *Heck's, Inc.*, 215 N.L.R.B. 765 (1974), and the punitive nature of the award, it was necessarily understood that the Board's authority under Section 10(c) was in question. In order to justify the Board's departure from its *Heck's* standard, both the Board and the Court of Appeals had to assume in the first place that the Board had statutory authority to award litigation expenses. Indeed, this threshold issue was addressed by both the Board and the Union in the

Court of Appeals. NLRB's Brief pp. 42-46; Union's Brief pp. 30-31. The Court of Appeals discussed the question, while the Board merely affirmed the Administrative Law Judge's decision without explanation. The Court of Appeals noted that in *Int'l. Union of Electrical, Radio, and Machine Workers v. NLRB*, 426 F.2d 1243 (D.C. Cir. 1970), *cert. denied*, 400 U.S. 950 (1970), the Court of Appeals for the District of Columbia decided that "the Board *did* have statutory authority to impose such affirmative 'make whole' "relief." (Pet. App. 13, n.6). The Court of Appeals further stated, incorrectly, that this Court had, in *NLRB v. Food Store Employees*, 417 U.S. 1 (1974), "expressly approved the Board's 'debatable-frivolous' standard" in deciding whether to award litigation expense. There can be little doubt that if the Court of Appeal's decision is allowed to stand the Board will cite this case as authority for the proposition that Section 10(c) empowers it to award litigation expenses.

Findings by the Board on issues of policy and fact are not necessary in order for this Court to adequately address the question. Cf. *Marshall Field and Co. v. NLRB*, 318 U.S. 253, 256 (1943); *NLRB v. Cheney California Lumber Co.*, 327 U.S. at 389. The question is not whether the Board *should* award litigation expense under the circumstances, but whether it *can* award them at all. Thus, "the Board's error was purely a legal one, so basic in its nature that § 10(e) has no application." *NLRB v. Annapolis Emergency Hospital Assn.*, 561 F.2d 524, 526 (4th Cir. 1977). The issue, admittedly not well articulated by the Petitioner in the proceedings below, was recognized by all parties to the proceedings and is so basic to the Board's Order and the Court of Appeals subsequent enforcement that it cannot be said the Petitioner has waived this argument.

Furthermore, even if the petitioner did not comply with § 10(e), review by this Court is not precluded. It is well

settled that the courts may review a Board order, even if the complaining party has not properly objected before the Board, if the actions of the Board are patently outside the scope of its statutory authority. *NLRB v. Ochoa Fertilizer Corp.*, 368 U.S. at 322. The award of litigation expenses by the Board is patently outside the authority granted it by Congress under § 10(c) of the Act. Just this term this Court has reaffirmed the long-standing principle that under the "American Rule" courts ordinarily have no power to award attorney's fees unless Congress has made "specific and explicit provisions for the allowance of" such fees. *Summit Valley Industries, Inc. v. Local 112, Carpenters and Joiners of America*, 50 U.S.L.W. 4560, 4561 (U.S. June 1, 1982). It is inconceivable that an administrative agency, a creature of statute, could be vested with such powers absent such a specific and explicit statutory provision when the courts have no such authority.

For the foregoing reasons, the Court is not precluded from deciding whether the Board is empowered under § 10(c) of the Act to award litigation expenses. The Petition should be granted and the judgment of the Court of Appeals should be reversed.

Respectfully submitted,

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WORKERS UNION, AFL-CIO, CLC,
Respondents.

Brief Amicus Curiae Of The Chamber Of Commerce Of The United States In Support Of A Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

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STATEMENT OF INTEREST[1]

The Chamber of Commerce of the United States (the "Chamber") is the largest federation of corporations, trade associations, chambers of commerce and individuals engaged in business and the professions, with an aggregate membership in excess of 200,000.

The Chamber regularly represents its members' interests in matters before the courts, as well as before the United States Congress, the Executive branch, and Federal regulatory agencies. Such representation, particularly in matters involving labor relations, constitutes a significant aspect of the Chamber's activities. Accordingly, the Chamber has sought to advance

[1] This brief is filed with the written consent of the parties pursuant to Supreme Court Rule 36.1.

those interests in a wide spectrum of labor relations cases before this Court.[2]

The issue presented here, the parameters of the National Labor Relations Board's ("NLRB" or "Board") authority to issue remedial orders is of great concern to the Chamber's members. Here the Board and the U.S. Court of Appeals for the Fourth Circuit have ordered an employer to pay not only the litigation costs of both the union and the Board itself, but the excess organizational costs of the union, as well.

Whether the Board has the authority to order such relief is an issue on which this Court has expressly reserved decision. *NLRB* v. *Food Store Employees*, 417 U.S. 1, 8 n.9 (1974). The Fourth Circuit's erroneous reading of that decision for the proposition that this Court has indeed affirmed the Board's authority to order such a remedy has a chilling effect on all Chamber members who may be involved in litigation with the NLRB. Previously, employers were immune from such strident remedies, so long as the defenses they raised were not "frivolous." *Tiidee Products, Inc.*, 194 N.L.R.B. 1234 (1972). Now, those employers may be subject to these costly remedies without regard to the *bona fides* of their defenses. Such a questionable result is of concern to all NLRB employer-respondents. It is for this reason that the Chamber respectfully submits this brief.

REASONS FOR GRANTING THIS WRIT

The issues presented here, the scope of the Board's authority, if any, to award litigation expenses to itself and a charging party, as well as to award excess organizational costs to a union, have never been settled by this Court. *See NLRB* v. *Food Store*

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[2] *E.g., American Textile Manufacturers Institute* v. *Bingham*, U.S. 69 L.Ed.2d 185 (June 17, 1981); *Industrial Union Department* v. *American Petroleum Institute*, 448 U.S. 607 (1980); *Carbon Fuel Co.* v. *United Mine Workers*, 444 U.S. 212 (1979); *New York Telephone Co.* v. *New York State Department of Labor*, 440 U.S. 519 (1979), *NLRB* v. *Enterprise Assoc., etc.*, 429 U.S. 507 (1977); *Buffalo Forge* v. *Steelworkers*, 428 U.S. 397 (1976); *Connell Construction Co., Inc.* v. *Plumbers and Steamfitters Local Union 100*, 421 U.S. 616 (1975).

Employees, 417 U.S. 1, 8 n.9 (1974). Unless these issues are finally resolved by this Court, the Board will be able to continue to impose such remedies against any employer-respondent solely at its discretion. Resolution of these issues takes on added importance in view of their facially punitive nature. For, it has been long established that the Board lacks the authority to issue punitive orders. *See infra* p. 4.

Moreover, since no comparable remedy is available against a charging party, even where that party may have filed frivolous or vexatious charges, the Board's assessment of litigation expenses, solely against the respondent, raises serious questions as to the fundamental fairness of the procedure.[3] If allowed to stand, such an approach would undermine confidence in the evenhanded processes of the Board and would upset the delicate balance sought under the National Labor Relations Act (the "Act"), 29 U.S.C. §151 *et seq.*, in adjusting the rights and interests of labor, management and government.

I.

THE BOARD'S AUTHORITY TO ISSUE AFFIRMATIVE RELIEF IS NOT UNLIMITED.

The broad remedial power of the Board to "take such affirmative action . . . as will effectuate [the Act's] policies", 29 U.S.C. §160(c), is not unlimited. *Republic Steel Corp.* v. *NLRB,* 311 U.S. 7,11 (1940); *NLRB* v. *Fansteel Metallurgical Corp.,* 306 U.S. 240 (1939). Even though the Board has recently begun fashioning expansive and creative remedies in light of the circumstances of each case, (*Haddon House Food Products, Inc.,* 242 N.L.R.B. 1057 (1979), *enf. as modified sub nom. Teamsters Local 115* v. *NLRB* 640 F.2d 392 (D.C. Cir. 1981) *cert. denied,* ____ U.S. ____, 70 L.Ed.2d 118; *United*

[3] Section 10(c) of the Act, 29 U.S.C. §160(c), grants the Board only the authority to order a charged party to take "affirmative action." The Board has held that it is an unfair labor practice for an employer to sue an employee in a civil action to recover the expenses incurred in defending repeated meritless charges before the Board. *Power Systems, Inc.* 239 N.L.R.B. 445 (1978), *enf. denied sub nom. Power Systems, Inc.* v. *NLRB,* 601 F.2d 936 (7th Cir. 1979).

Dairy Farmers' Cooperative Assoc., 242 N.L.R.B. 1026 (1979), *remanded sub nom., United Dairy Farmers' Cooperative* v. *NLRB*, 633 F.2d 1054 (3rd Cir. 1980), *on remand*, 257 N.L.R.B. 129 (1981)), it is still well settled that the Board has no authority to issue punitive or confiscatory orders. *Republic Steel Corp.* v. *NLRB, supra* at 11; *Consolidated Edison Co.* v. *NLRB*, 305 U.S. 197, 235-36 (1938); *United Steelworkers of America* v. *NLRB*, 646 F.2d 616, 629 (D.C. Cir. 1981); *Decaturville Sportswear Co.* v. *NLRB*, 406 F.2d 886, 889 (6th Cir. 1969). Nor may the Board justify an otherwise impermissibly punitive order on the grounds that it will deter future violations of the Act, *Republic Steel Corp.* v. *NLRB, supra* at 12,[4] or that it will vindicate some supposed public right or provide indemnity against community losses. *Id.* at 11.

In the instant case, the Board has overstepped its general grant of authority under section 10(c) of the Act, 29 U.S.C. §160(c), both by awarding litigation expenses to itself and by awarding litigation expenses and organizational costs to the charging party. It does so without regard to the *bona fides* of respondent's defenses, apparently as a deterrent against future violations and future litigation. A decision by this Court is necessary to define the limits of the Board's authority concerning the award of attorney's fees and other litigation expenses and excess organizational costs under the Act.

II.

THE FOURTH CIRCUIT MISREAD THIS COURT'S OPINION IN *FOOD STORE EMPLOYEES* V. *NLRB.*

An even more compelling reason for granting review is the Fourth Circuit's absolutely erroneous interpretation of this Court's decision in *NLRB* v. *Food Store Employees, supra.* At issue in *Food Store* was an order by the Court of Appeals for the D.C. Circuit that the union in that case was entitled to

[4] *United Steelworkers of America* v. *NLRB*, 646 F.2d 616 (D.C. Cir. 1981); *Bell & Howell Co.* v. *NLRB*, 598 F.2d 136 (D.C. Cir. 1979), *cert. denied*, 442 U.S. 942; *National Cash Register Co.* v. *NLRB*, 466 F.2d 945 (6th Cir. 1972), *cert. denied*, 410 U.S. 966.

reimbursement of its excess organizational expenses, even though no such order was issued by the Board.

In granting the order, the D.C. Circuit had noted the Board's prior test for granting an award of litigation expenses and excess organizational expenses: whether the issues presented for litigation were "frivolous" rather than "debatable."

This Court struck down the D.C. Circuit's order on the basis that it exceeded the Circuit's authority under sections 10(e) and (f) of the Act[5] to modify the Board's order. *NLRB* v. *Food Store Employees, supra* at 8-9. In so holding this Court stated:

> We thus have no occasion at this time to address the question whether the Board's broad powers under § 10(c) to fashion remedies include the power to order reimbursement of litigation expenses and excess organizational costs.

Id. at 8 n.9.

Despite this unequivocal statement that this Court was *not* deciding the Board's authority to award litigation expenses and organizational costs, and by implication, the parameters of such authority, the Fourth Circuit unexplainably found that "[t]he Supreme Court has *expressly approved* the Board's debatable-frivolous' standard." (emphasis added) (Appendix 13a). The Chamber submits it is inconceivable that this Court could have "expressly approved" the *standard* under which the Board is empowered to award fees, when it declined to decide whether the Board in fact possesses such power. Absent resolution by this Court of the Board's authority in this regard, employers will be bound by the misapprehension of the Fourth Circuit below, and other courts, as to the meaning of this Court's *Food Store* holding. *See also, Winn-Dixie Stores* v. *NLRB*, 567 F.2d 1343, 1353 (5th Cir. 1978).

The application of this punitive remedy by the Board will cause severe upheaval in the balance contemplated by the Act in at least two significant ways. First, it will have a chilling

[5] 29 U.S.C. §§160(e) and (f).

effect on clearly meritorious litigation. Second, it will discourage employer-respondents from defending charges before the Board, or from raising defenses which, though arguably meritorious and non-frivolous, may not be accepted. The Court of Appeals recognized this danger by acknowledging in its decision below that "routinely imposing such expenses could, of course, tend to deter meritorious litigation by an employer." (Appendix 18a). The fact that this remedy may be seldom used, as the decision below assumes, does not make it any less punitive or any less prophylactic for potential employer-respondents before the Board. As this Court said in another context with respect to the award of attorney's fees: "one should not be penalized for merely defending or prosecuting a lawsuit." *F.D. Rich Co.* v. *Industrial Lumber Co.*, 417 U.S. 116, 128-9 (1974); *Fleischmann Distilling Corp.* v. *Maier Brewing Co.*, 386 U.S. 714, 718 (1967). Indeed, to hold otherwise would penalize a litigant for exercising its statutory and constitutional right to pursue "debatable" defenses before the Board and if deemed necessary, before the courts. As this Court stated in *Food Store:*

> "... the public and private interest in affording the employer a determination of his 'debatable' defenses, unfettered by the prospect of bearing his adversary's litigation costs, outweigh the public interest in uncrowded dockets."

Food Store, supra at 8.

III.

ASSUMING THIS COURT AGREES THAT THE BOARD HAS THE STATUTORY AUTHORITY TO AWARD LITIGATION EXPENSES AND EXCESS ORGANIZATIONAL COSTS, THE BOARD'S ORDER IS DEFECTIVE IN THAT IT FAILS TO ESTABLISH A LITMUS TEST FOR THE GRANTING OF THOSE AWARDS.

The Board's order in this case fails to establish discernable standards by which other employer-respondents may be guided in determining their rights and potential liabilities in future

Board proceedings. Not only does the Board's order depart from the accepted "America rule" that attorney's fees in federal litigation are not ordinarily recoverable in the absence of a specific statutory provision or enforceable contract (*Alyeska Pipeline Service Co.* v. *Wilderness Society*, 421 U.S. 240, 247 (1975); *F.D. Rich Co.* v. *Industrial Lumber Co., supra* at 126; *Fleischmann Distilling Corp.* v. *Maier Brewing Co., supra* at 717); the order also departs from the Board's own, albeit nebulous, doctrine that litigation expenses could be awarded only in cases where a respondent's defenses are "frivolous" as opposed to "debatable." *Tiidee Products, Inc.* 194 N.L.R.B. 1234 (1972), *enf'd as modified sub nom. I.U.E.* v. *NLRB*, 502 F.2d 349 (D.C. Cir. 1974); *Heck's, Inc.*, 191 N.L.R.B. 886 (1971), *modified sub nom. Food Store Employees Union, Local 347* v. *NLRB*, 476 F.2d 546 (D.C. Cir. 1973), *remanded*, 417 U.S. 1 (1974), *on remand, Heck's, Inc.*, 215 N.L.R.B. 765 (1974).[6]

The Board offers no rationale for abandoning its "frivolous-debatable" test, nor any explanation as to how the newly constituted remedy imposed here can be expected to effectuate the policies of the Act other than, perhaps, its potential deterrent effect. *See, Virginia Electric Power Co.* v. *NLRB*, 319 U.S. 533, 541 (1943). In place of the frivolous-debatable test, the Board has substituted an impermissibly punitive and standardless approach to the award of litigation expenses in future cases. It is based neither on the *bona fides* of a respondent's defenses nor on any other discernable grounds related to the litigation.

In modifying or expanding its previous practice the Board cannot simply ignore that practice—"it must make a reasoned

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[6] As previously noted, p. 5, the Board's past practice has been to deny the award of organizational and litigation expenses even in cases of aggravated and pervasive misconduct, or in cases of flagrant repetition of unlawful conduct, unless the employer's defenses were clearly "frivolous" as distinguished from "debatable." *Heck's Inc.*, 215 N.L.R.B. 765, 767 (1974); *Winn-Dixie Stores, Inc.*, 224 N.L.R.B. 1418, 1420-21 (1976); *Tiidee Products, Inc.*, 194 N.L.R.B. 1234 (1972). On this basis, courts have refused to enforce this "drastic" remedy unless the employer's defenses were totally frivolous. *Amalgamated Clothing Workers of America, El Paso Dist. Joint Board, AFL-CIO* v. *NLRB*, 491 F.2d 595, 597 n.1 (5th Cir. 1974).

explanation for the change." *J.P. Stevens & Co.* v. *NLRB*, 623 F.2d 322, 329 (4th Cir. 1980), *cert. denied*, 449 U.S. 1077. Parties to Board proceedings have a right to articulated standards by which they may be guided in the future.

The award of litigation expenses in this case was described by Judge Field in his dissenting opinion below as an "attainder" against Stevens which "oversteps the constitutional limits of due process and, in effect, denies Stevens access to the courts." (Appendix 20a). More than an attainder against one individual respondent, however, this action by the Board opens the door of Section 10(c) remedies to a punitive approach not heretofore sanctioned by this Court or by the Congress.

Despite assurances by the Fourth Circuit that this remedy will affect few employers, and that it is predicated on one company's "history of litigation before the Board and in the courts" (Appendix 18a), once established as a remedy in the Board's arsenal, and absent limitation or guidance from this Court, any employer-respondent potentially bears the risk, not shared by charging parties, of shouldering the total litigation expenses of the parties as a penalty in the event it loses.

Further assurances by the Fourth Circuit that the Board's expansion of its prior doctrine (i.e., "frivolous-debatable") will be seldom used, and only then in cases of "flagrant, aggravated, persistent, and pervasive" misconduct (Appendix 18a), is of little comfort to employers. For, what the courts once may have considered "extraordinary" remedies, such as this, to be imposed only in "exceptional" cases marked by eggregious misconduct, are now requested almost routinely by the NLRB's General Counsel and issued almost as frequently by the Board in less than exceptional cases. [7]

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[7] For example, the courts have frequently criticized the Board for its overzealous application of the "extraordinary" remedy of *Gissel* bargaining orders (*NLRB* v. *Gissel Packing Co.*, 395 U.S. 575 (1969) *reh.'g denied*, 396 U.S. 869) in less than exceptional circumstances. *See, e.g., NLRB* v. *K&K Gourmet Meats, Inc.*, 640 F.2d 460, 468-69 (3rd Cir. 1981) ("In this case, and too often in others, the Board has looked upon a bargaining order as a convenient remedy for minor violations . . ." *Id* at 468 n.3); *Rapid Mfg Co.* v.

(footnote continues)

The scope of appellate review of a Board order is generally limited to questions of law, such as those presented here, rather than the appropriateness of a selected remedy or its discretionary application in a particular case. *Phelps Dodge Corp.* v. *NLRB*, 313 U.S. 177, 194 (1941). Thus, it is vital for all employers that this Court now resolve the legal issues here presented of the authority for, and the parameters of, the extraordinary remedy in this case. Otherwise, this expanded remedy may become, in the Board's discretion, the norm rather than the exception. The undesirable consequences would be to chill an employer's right to pursue meritorious litigation.

Finally, the question of whether attorney's fees and related expenses may be recovered as compensatory damages under Section 303 of the Act, 29 U.S.C. §187, is currently before the Court by writ of certiorari in *Summit Valley Industries, Inc*, v. *Local 122, Carpenters and Joiners of America, cert. granted,* ____ U.S. ____ (1981). It is respectfully submitted that the instant case, involving related but not identical issues, is no less significant in adjusting the rights and interests of parties to labor disputes and in maintaining the delicate balance among labor, management and government necessary for industrial peace.

(footnote continued)

NLRB, 612 F.2d 144, 148-51 (3rd Cir. 1979) (not an " 'extraordinary case' by any standard." *Id* at 149); *NLRB* v. *Armcor Industries, Inc.*, 535 F.2d 239, 245-46 (3rd Cir. 1976); *Red Oaks Nursing Home* v. *NLRB*, 633 F.2d 503, 509-510 (7th Cir. 1980) ("The Board appears in effect to be automatically issuing bargaining orders on the basis of virtually *any* unfair labor practice, a policy clearly not in accordance with *Gissel.*" *Id* at 510); *First Lakewood Assoc.* v. *NLRB*, 582 F.2d 416, 424 (7th Cir. 1978); *Peerless of America, Inc.* v. *NLRB*, 484 F.2d 1108, 1118-22 (7th Cir. 1973); *NLRB* v. *Jamaica Towing, Inc.*, 632 F.2d 208, 215-216 (2d Cir. 1980); *Grandee Beer Distributors, Inc.* v. *NLRB*, 630 F.2d 928, 934 (2d Cir. 1980); *NLRB* v. *Pilgrim Foods, Inc.*, 591 F.2d 110, 119-120 (1st Cir. 1978); *NLRB* v. *Appletree Chevrolet, Inc.*, 608 F.2d 988, 997-998 (4th Cir. 1979). *See also, NLRB* v. *Keystone Pretzel Bakery, Inc.*, No. 81-2067 (3rd Cir. 1982) ("extraordinary remedy not to be applied in a routine fashion")

CONCLUSION

For the foregoing reasons a writ of certiorari should issue to review the judgment of the Court of Appeals.

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